United States Department of Labor
Employees' Compensation Appeals Board

M.D., Appellant	)	
and	)	**Docket No. 18-0709**
	)	**Issued: September 4, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Melville, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 15, 2018 appellant filed a timely appeal from an August 23, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a back injury causally related to the accepted January 20, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record provided to the Board includes evidence received after OWCP issued its August 23, 2017 decision. The Board's jurisdiction is limited to evidence that was in the case record at the time of OWCP's final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On January 21, 2017 appellant, then a 52-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that while at work on January 20, 2017 she strained her back when she was separating mail. She stopped work on January 22, 2017 and returned on January 24, 2017. On the back of the claim form, the employing establishment controverted appellant's claim contending that appellant did not report the injury until five hours after the alleged incident and she could not recall the equipment she used at the time of the alleged injury.

Appellant was initially treated in urgent care by Sheenz Mendez, a certified physician assistant. In a work status note dated January 21, 2017, Ms. Mendez related that appellant was treated on that date and could return to work on January 24, 2017. She also completed a duty status report (Form CA-17), which indicated that on January 20, 2017 appellant injured her lower back when separating mail. Ms. Mendez noted a diagnosis of lower back pain and related that appellant could return to work with specified restrictions.

OWCP received a position description for a sales and distribution associate.

On January 28, 2017 OWCP offered appellant a full-time modified-duty job assignment. Appellant accepted the job offer on that date.

In a February 3, 2017 development letter, OWCP informed appellant that additional evidence was needed in support of her claim. It requested that she complete an attached claim development questionnaire and advised appellant of the need for medical evidence to establish her claim. OWCP afforded appellant 30 days to submit the requested information. No additional information was submitted within the allotted time.

By decision dated March 10, 2017, OWCP denied appellant's traumatic injury claim. It accepted that the January 20, 2017 employment incident occurred as alleged, but denied her claim because the medical evidence submitted did not contain a medical diagnosis in connection with the accepted incident. OWCP specifically noted that "pain" was a symptom, not a medical diagnosis. Consequently, it found that appellant had failed to establish the medical component of fact of injury.

OWCP subsequently received several medical reports. In a January 21, 2017 hospital record, Ms. Mendez related appellant's complaints of low back pain "after heavy lifting at work yesterday." Upon physical examination of appellant's lumbar spine, she observed mild tenderness of the bilateral/lateral spine and good range of motion. Ms. Mendez diagnosed low back pain. In an amended January 21, 2017 report, signed on March 7, 2017, she added a second diagnosis of back muscle spasms.

A January 21, 2017 lumbar spine x-ray scan report showed mild degenerative changes of the lumbar spine and bilateral sacroiliac joints.

In a January 21, 2017 doctor's initial form report, Dr. Melina J. Khwaja, Board-certified in emergency medicine, noted a January 20, 2017 date of injury and indicated that appellant was processing mail. The form indicated a diagnosis of low back pain.

In a January 23, 2017 report, Dr. Khwaja noted a diagnosis of low back pain. She related that appellant's lumbar spine x-ray scan report was normal.

On March 16, 2017 OWCP received appellant's response to its development letter. In a narrative statement, appellant explained that on January 20, 2017 she was emptying a cage and then moved on to remove heavy buckets from a bulk mail center (BMC). She indicated that she felt a strain in her back when emptying the cage and lifting heavy buckets from the BMC. Appellant was able to continue her work, but as time went on, her discomfort progressed to excruciating pain. She explained that it was then, approximately four hours after the incident, that she notified management. Appellant also noted that she had a previous back injury under OWCP File No. xxxxxx845 with a date of injury of May 21, 1998.

On March 29, 2017 appellant requested a hearing before a hearing representative from OWCP's Branch of Hearings and Review. A hearing was held on July 13, 2017.

By decision dated August 23, 2017, OWCP's hearing representative affirmed the March 10, 2017 decision. She found that appellant failed to establish fact of injury as none of the medical evidence submitted provided a medical diagnosis in connection with the January 20, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which compensation is claimed is causally related to that employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.[6] There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[7] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[8] The employee may establish that the employment incident occurred as alleged,

[3] *Supra* note 1.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[8] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

but fail to show that his or her disability or condition for which compensation is being claimed is causally related to the employment incident.[9]

ANALYSIS

Appellant alleged that she strained her back on January 20, 2017 when sorting mail. OWCP accepted that the January 20, 2017 employment incident occurred as alleged, but denied her claim because the evidence of record did not include a medical diagnosis in connection with the accepted incident. The Board finds that appellant has failed to establish her traumatic injury claim as the medical evidence submitted is insufficient to establish the medical component of fact of injury.

In support of her claim, appellant submitted January 21 and 23, 2017 reports by Dr. Khwaja. As OWCP noted in its denial decisions, "pain" is a symptom, not a medical diagnosis.[10] Accordingly, Dr. Khwaja's finding of back pain is insufficient to satisfy appellant's burden of proof by establishing the medical component of fact of injury.[11]

The January 21, 2017 lumbar spine x-ray report also fails to provide a firm diagnosed back condition resulting from the January 20, 2017 employment incident.[12] Without a firm diagnosis and rationalized medical opinion regarding causal relationship, this diagnostic report is of limited probative value.[13]

The several urgent care reports by Ms. Mendez dated January 21, 2017 lack probative value and are insufficient to establish appellant's claim as physician assistants are not considered physicians as defined by FECA.[14]

There is no evidence of record that establishes a medical diagnosis in connection with the accepted employment incident. Accordingly, the Board finds that appellant failed to establish that she sustained a back injury causally related to the accepted January 20, 2017 employment incident.

On appeal appellant alleges that she had two coworkers who would attest to the fact that she injured herself. She described the January 20, 2017 employment incident and related that she continued to suffer from back pain. As explained above, the employment incident has been

[9] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[10] Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

[11] *F.U.*, Docket No. 18-0078 (issued June 6, 2018); *see also Deborah L. Beatty*, 54 ECAB 340, 341 (2003).

[12] *T.O.*, Docket No. 18-0139 (issued May 24, 2018).

[13] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[14] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *V.C.*, Docket No. 16-0642 (issued April 19, 2016); *L.C.*, Docket No. 16-1717 (issued March 2, 2017) (nurses); *Allen C. Hundley*, 53 ECAB 551, 554 (2002) (physician assistant).

accepted to have occurred as alleged, however, appellant has not submitted sufficient medical evidence to establish the medical component of fact of injury of her claim. The medical evidence of record fails to support that she sustained a back injury as a result of the accepted employment incident.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a back injury causally related to the accepted January 20, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board