United States Department of Labor
Employees' Compensation Appeals Board

K.L., Appellant	)	
and	)	**Docket No. 18-1018**
	)	**Issued: April 10, 2019**
SOCIAL SECURITY ADMINISTRATION, Richmond, CA, 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 April 19, 2018 appellant filed a timely appeal from a January 5, 2018 merit decision and a March 8, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a medical condition causally related to the accepted April 17, 2017 employment incident; and (2) whether

[1] Appellant filed a timely request for oral argument. After exercising its discretion, by order dated February 21, 2019, the Board denied her request, finding that the issues on appeal could adequately be addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 18-1018 (issued February 21, 2019).

[2] 5 U.S.C. § 8101 *et seq.*

OWCP properly denied appellant's request for a video hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On April 20, 2017 appellant, then a 42-year-old social insurance specialist, filed a traumatic injury claim (Form CA-1) alleging that on April 17, 2017 she bruised her knees and twisted her right ankle when she slipped and fell when walking to the breakroom while in the performance of duty. She did not stop work.

In a form report dated April 26, 2017, Dr. Zachary Clifford Landman, an orthopedic surgeon, noted appellant's history that she had slipped and fell forward on April 17, 2016 and twisted her right ankle while walking to the breakroom. He noted her subjective complaints and detailed physical examination findings. Appellant's physical examination revealed tenderness with palpation and no objective findings of inflammation or deformity. Dr. Landman reported that it was unclear how appellant's symptoms related to her history of a low impact fall. He concluded that he was unable, without further medical investigation, to determine whether there was a causal relationship between appellant's complaints and her employment incident.

In a May 8, 2017 form report, Dr. John Lane Hall, Board-certified in occupational medicine, noted that appellant was seen for complaints of right upper buttock pain and bilateral ankle and knee pain following a low impact fall from a standing position. He noted that the only physical examination finding was tenderness on palpation. A review of x-ray interpretations revealed mild S1 degenerative disc disease. Dr. Hall diagnosed history of fall, right ankle joint pain, and low back pain. He opined that it was unclear how appellant's condition was related to the history of a low impact fall.

On May 30, 2017 appellant was seen by Dr. Latifat Titilayo Apatira, Board-certified in internal and occupational medicine. She placed appellant on modified duty through June 15, 2017.

In a June 5, 2017 progress report, Dr. Abena Akufo Opoku, a physician specializing in occupational medicine, noted examination findings and an injury date of April 17, 2017. She diagnosed low back pain. Dr. Opoku indicated that appellant was to continue working with restrictions and recommended acupuncture treatment.

The record contains visit verifications for treatment provided on July 10, 17, 24, and 31, 2017 by Lisa Lam, acupuncturist.

In a June 15, 2017 report, Dr. Christina Yu Ting Wang, a Board-certified occupational medicine physician, noted an injury date of April 17, 2017. Appellant was instructed to continue with modified work until July 11, 2017.

In a July 11, 2017 progress report, Dr. Apatira recommended continuation of acupuncture treatment based on appellant attributing her improvement of her low back pain to this treatment. Physical examination findings were unchanged. Appellant was instructed to continue with modified work until July 31, 2017. On August 8, 2017 Dr. Apatira released appellant to full-duty work.

By development letter dated August 9, 2017, OWCP informed appellant that it had not received factual and medical evidence necessary to establish her claim. It advised regarding the type of factual and medical evidence needed and provided a questionnaire for completion regarding the April 17, 2017 incident. OWCP afforded appellant 30 days to submit the necessary evidence.

In response to OWCP's request, appellant submitted an August 28, 2017 report from Dr. Saqib Syed Rizvi, a Board-certified occupational medicine physician, and an August 29, 2017 report from Dr. Apatira. Both physicians diagnosed chronic low back pain and related that appellant had been released to return to full-duty work.

The record also contains visit verifications for treatment on August 14 and 21, 2017 from Jaime Valier Chaves, a licensed acupuncturist, who diagnosed lower back and right ankle joint pain.

By decision dated September 8, 2017, OWCP denied appellant's claim finding that the medical evidence of record failed to contain a diagnosis causally related to the accepted April 17, 2017 employment incident. It noted that pain was not a diagnosed medical condition as it is considered a symptom. OWCP concluded, therefore, that appellant had not met the requirements to establish an injury as defined by FECA.

Following the denial of her claim appellant submitted a completed questionnaire, an x-ray dated April 26, 2017, and progress notes from Ms. Lam.

In a May 24, 2017 progress note, Dr. Judy Fong Liu, a Board-certified internist, diagnosed low back pain and "most likely" lumbar radiculopathy. She provided examination findings and noted appellant had experienced back pain for a month.

On May 30, 2017 appellant was seen by Dr. Apatira who diagnosed low back pain. Physical examination findings were listed.

Dr. Wang, in progress notes dated June 15, 2017 provided examination findings and diagnosed low back pain. She reviewed an x-ray which revealed findings of mild S1 degenerative disc disease.

Dr. Apatira, in an August 8, 2017 progress note, reported examination findings and diagnosed low back pain.

In progress reports dated August 28 and 29, 2017, Dr. Apatira noted that appellant was seen for a worsening low back pain and that she had been working full duty as of August 1, 2017. She again diagnosed low back pain and noted an injury date of April 17, 2017.

On September 19, 2017 OWCP received appellant's request for review of the written record.[3]

[3] On the form dated September 14, 2017 appellant checked the request for review of the written record and circled and wrote video hearing.

By decision dated January 5, 2018, OWCP's hearing representative affirmed the denial of appellant's claim. She found the medical evidence failed to contain a definitive medical diagnosis causally related to the accepted April 17, 2017 employment incident.

On January 10, 2018 OWCP received appellant's request for video hearing, postmarked December 28, 2017. In a statement appellant wrote that she was appealing the denial of her claim because OWCP had failed to properly consider the medical evidence she had submitted.

By nonmerit decision dated March 8, 2018, an OWCP hearing representative denied appellant's request for review by the Branch of Hearings and Review as an OWCP hearing representative had previously conducted a review of the written record and issued a decision on January 5, 2018. She exercised her discretion and further denied the request as the case could equally well be addressed by requesting reconsideration and submitting evidence not previously considered establishing her claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6] To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[7] 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.[8] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[8] *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

[9] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 7.

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[10] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[11] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment incident is sufficient to establish causal relationship.[12]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted April 17, 2017 employment incident.

Appellant first sought treatment on April 26, 2017 with Dr. Landman, who related appellant's history of injury and noted her bilateral knee and right upper buttock pain. However, Dr. Landman related that without further medical investigation he was unable to determine a causal connection between appellant's symptoms and the employment incident. As he did not attribute appellant's condition to the accepted April 17, 2017 employment incident, his opinion does not support a finding of causal relationship.[13]

On May 8, 2017 appellant was by Dr. Hall who diagnosed right ankle joint pain and low back pain. Dr. Hall opined that it was unclear how her condition had been caused or aggravated by her low impact fall history. Initially, the Board notes that pain is considered a symptom rather than a compensable medical diagnosis.[14] Lacking a firm diagnosis and rationalized medical opinion regarding causal relationship, Dr. Hall also fails to support a finding of causal relationship.[15]

Appellant also submitted medical evidence from Drs. Apatira, Opoku, Rizvi, and Wang. Diagnoses again were all relegated to low back pain. In these reports the physicians do not provide an opinion on the issue of causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[16] These reports, therefore, are insufficient to establish appellant's claim.

[10] *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *L.D., id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[12] *C.L.*, Docket No. 18-1323 (issued January 3, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[13] *J.A.*, Docket No. 17-0236 (issued July 17, 2018).

[14] *M.J.*, Docket No. 18-1114 (issued February 5, 2019) *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[15] *Id*.

[16] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Dr. Liu noted appellant's low back pain and "most likely" lumbar radiculopathy. The Board finds that because Dr. Liu has not provided an opinion on the issue of causal relationship, her report is of no probative value on the issue of causal relationship.[17]

The remaining evidence is of no probative value on the issue of causal relationship. The reports dated April 27 to August 21, 2017 from appellant's physical therapists and acupuncturists have no probative medical value as neither a physical therapist nor an acupuncturist is considered a physician as defined under FECA.[18]

The record also contains an x-ray report dated April 26, 2017. While this x-ray was interpreted as revealing mild S1 degenerative disc disease, the Board has held that diagnostic reports lack probative value as they do not provide an opinion regarding the cause of the diagnosed conditions.[19]

The Board finds that the record lacks rationalized medical evidence establishing causal relationship between the April 17, 2017 employment incident and her claimed conditions. Thus, appellant has not met her burden of proof.[20]

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.

LEGAL PRECEDENT -- ISSUE 2

Any claimant dissatisfied with an OWCP decision shall be afforded an opportunity for either an oral hearing or a review of the written record.[21] A request for a hearing or review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought.[22] OWCP regulations further provide that the claimant must have not previously submitted a reconsideration request (whether or not it was granted) on the same decision.[23] Although a claimant who has previously sought reconsideration is not, as a matter of right, entitled to a hearing or review of the written record, the Branch of Hearings and Review may

[17] *Id*.

[18] 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; *M.M.*, Docket No. 16-1180 (issued October 26, 2016) (acupuncturist and physical therapist); *C.K.*, Docket No. 14-1235 (issued September 11, 2014) (acupuncturists); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (physical therapists).

[19] *S.H.*, Docket No. 17-1447 (issued January 11, 2018).

[20] *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

[21] 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.615.

[22] *Id*. at 10.616(a).

[23] *Id.*

exercise its discretion to either grant or deny a hearing following reconsideration.[24] Similarly, the Branch of Hearings and Review may exercise its discretion to conduct a hearing or review the written record where a claimant requests a second hearing or review of the written record on the same issue.[25]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's January 10, 2018 request for a video hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant's request for a video hearing by an OWCP hearing representative received on January 10, 2018, was made after she had previously received a review of the written record by a representative of the Branch of Hearings and Review. By decision dated September 8, 2017, OWCP found that appellant had not established a diagnosed medical condition causally related to the accepted employment incident. By decision dated January 5, 2018, an OWCP hearing representative had affirmed the denial of appellant's claim. Consequently, appellant was not entitled to a video hearing before the Branch of Hearings and Review as a matter of right as she had previously requested review of the written record by an OWCP hearing representative.

An OWCP hearing representative properly exercised her discretion in denying appellant's request for a video hearing.[26] The Board has held that the only limitation on OWCP's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to logic and probable deduction from established facts.[27] In this case, the evidence of record does not establish that OWCP's hearing representative abused her discretion in denying appellant's request for a video hearing. Accordingly, the Board finds that OWCP properly denied her video hearing request.[28]

CONCLUSION

The Board finds that appellant has met not her burden of proof to establish a medical condition causally related to the accepted April 17, 2017 employment incident. The Board further finds that OWCP properly denied her January 10, 2018 request for a video hearing before a representative of OWCP's Branch of Hearings and Review.

[24] *T.M.*, Docket No. 18-1418 (issued February 7, 2019); *M.W.*, Docket No. 16-1560 (issued May 8, 2017); *D.E.*, 59 ECAB 438 (2008); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

[25] *Supra* note 19.

[26] *See D.T.*, Docket No. 18-0871 (issued February 11, 2019); *D.P.*, Docket No. 14-0308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013).

[27] *See D.T., id.; R.G.*, Docket No. 16-0994 (issued September 9, 2016); *Teresa M. Valle*, 57 ECAB 542 (2006).

[28] *See J.O.*, Docket No. 17-0789 (issued May 15, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 8 and January 5, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 10, 2019
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