

**United States Department of Labor
Employees' Compensation Appeals Board**

C.V., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Bloomington, IL, Employer)

Docket No. 18-1352
Issued: February 4, 2019

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 25, 2018 appellant filed a timely appeal from an April 25, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a lumbar condition causally related to the accepted January 18, 2018 employment incident.

FACTUAL HISTORY

On March 6, 2018 appellant, then a 27-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that, on January 18, 2018, she suffered a back injury when lifting magazines and carrying them up stairs while in the performance of duty. OWCP assigned

¹ 5 U.S.C. § 8101 *et seq.*

the claim OWCP File No. xxxxxx203.² Appellant stopped work on January 19, 2018.³ On the reverse of the Form CA-1, her immediate supervisor indicated that the employing establishment was controverting her claim because it was filed more than 30 days after the date of the claimed January 18, 2018 injury.

Appellant submitted a March 6, 2018 duty status report (Form CA-17) from Dr. David A. Braun, an attending Board-certified occupational medicine physician, who listed the date of injury as January 18, 2018, provided a diagnosis “due to injury” of lumbar strain, and recommended work restrictions, including lifting no more than 25 pounds.⁴ In a March 6, 2018 work status discharge report, Dr. Braun listed the date of injury as January 18, 2018, diagnosed low back pain and lumbar strain, and indicated that appellant should work under restrictions as of March 6, 2018.

In a March 19, 2018 development letter, OWCP requested that appellant submit additional evidence in support of her claim, including a physician’s opinion supported by a medical explanation as to how the reported January 18, 2018 work incident caused or aggravated a medical condition. It requested that she complete and return an attached questionnaire which posed various questions regarding her back condition prior to January 18, 2018 and the circumstances of the January 18, 2018 employment incident. OWCP afforded appellant 30 days to respond.

Appellant subsequently submitted a January 22, 2018 duty status report from Dr. Braun who listed the date of injury as January 18, 2018, provided a diagnosis “due to injury” of lumbar strain, and recommended work restrictions, including lifting no more than 20 pounds. In a January 22, 2018 work status discharge report, Dr. Braun listed the date of injury as January 18, 2018, diagnosed low back pain, and indicated that appellant should work under restrictions as of January 22, 2018.⁵

In a February 13, 2018 duty status report, Dr. Braun listed the date of injury as November 24, 2017, provided a diagnosis “due to injury” of lumbar strain, and recommended work restrictions, including lifting no more than 10 pounds. In a February 13, 2018 work status discharge report, he listed the date of injury as November 24, 2017, diagnosed low back pain, and indicated that appellant should work under restrictions as of February 13, 2018.

In a March 21, 2018 duty status report, Dr. Braun listed the date of injury as January 18, 2018, provided a diagnosis “due to injury” of lumbar strain, and recommended work restrictions, including lifting no more than 20 pounds on a continuous basis and no more than 30 pounds on an

² Appellant previously injured her back in the performance of duty on November 24, 2017, which OWCP accepted for lumbar strain under OWCP File No. xxxxxx533.

³ On January 18, 2018 appellant had been working in her regular-duty position for the employing establishment.

⁴ Dr. Braun described appellant’s clinical findings as tender lumbar back and limited range of motion. He noted “muscle spasm” in response to the text, “Describe how the injury occurred and state parts of the body affected.” Appellant also submitted a March 6, 2018 administrative document detailing Dr. Braun’s referral of her for physical therapy.

⁵ Appellant also submitted a January 31, 2018 notice of recurrence (Form CA-2a) listing January 18, 2018 as the date of her original injury and January 19, 2018 as the date she stopped work “after recurrence.” OWCP took no action on this claim as appellant submitted it prior to the issuance of a final decision regarding her claim for a January 18, 2018 employment injury.

intermittent basis. In a March 21, 2018 work status discharge report, he listed the date of injury as January 18, 2018, diagnosed low back pain and lumbar strain, and indicated that appellant should work under restrictions as of March 21, 2018. OWCP added other documents from OWCP File No. xxxxxx533 to the present case file, including narrative and form reports dated December 18, 2017 to March 21, 2018. In a February 13, 2018 narrative report, Dr. Braun listed the date of injury as January 18, 2018 and diagnosed low back pain. In a January 23, 2018 report, Dr. Larry Pinter, an attending Board-certified emergency medicine physician, indicated that appellant was seen four days prior with increased pain due to lifting heavy boxes at work and he diagnosed appellant with back paresthesias and back pain. In reports dated between December 18, 2017 and January 9, 2018, Dr. Glenn W. Payton, an attending chiropractor, diagnosed subluxation of L4 and L5 lumbar vertebrae.

In a January 22, 2018 narrative report from OWCP File No. xxxxxx533, Dr. Braun noted that appellant reported presenting for “new injury evaluation” after carrying a 60-pound bag filled with boxes of magazines up some stairs at work. He advised that he recently saw appellant for a “similar issue,” and indicated that she “appears to have another acute exacerbation of chronic back issues.” Dr. Braun noted that appellant had been back to work for over a week and reported “doing fine until this new injury occurred.” He diagnosed “low back pain.”

By decision dated April 25, 2018, OWCP denied appellant’s claim for a January 18, 2018 employment injury. It determined that she had established that a January 18, 2018 employment incident occurred in the form of lifting and carrying magazines up stairs, but further found that the medical evidence of record was insufficient to establish that her lumbar strain/sprain was causally related to the accepted January 18, 2018 employment incident. OWCP noted that, in reaching this determination, it had reviewed medical evidence found in OWCP File No. xxxxxx533. It advised that, in a January 18, 2018 report found in the file for that claim, Dr. Braun had corroborated appellant’s account of the January 18, 2018 employment incident, but had referenced a history of “chronic back issues” and provided a diagnosis of “low back pain.”⁶ OWCP indicated that, although Dr. Braun diagnosed lumbar sprain on March 13, 2018, he did not explain whether the lumbar sprain was causally related to the January 18, 2018 employment incident.⁷

LEGAL PRECEDENT

An employee seeking benefits under FECA⁸ 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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related

⁶ The case record does not contain a medical report dated January 18, 2018. OWCP appears instead to refer to the January 22, 2018 medical report of Dr. Braun.

⁷ The case record does not contain a March 13, 2018 report of Dr. Braun. The case record does contain March 6 and 21, 2018 narrative reports in which Dr. Braun listed the date of injury as January 18, 2018 and diagnosed low back pain and strain of muscle, fascia, and tendon of lower back.

⁸ See *supra* note 1.

to the employment injury.⁹ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹⁰

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the 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.¹¹ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.¹²

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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 claimant.¹³

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted January 18, 2018 employment incident.

In a January 22, 2018 narrative report, Dr. Braun, an attending physician, noted that appellant reported presenting for “new injury evaluation” after carrying a 60-pound bag filled with boxes of magazines up some stairs at work. He advised that he recently saw appellant for a “similar issue,” and indicated that she “appears to have another acute exacerbation of chronic back issues.” Dr. Braun noted that appellant had been back to work for over a week and reported “doing fine until this new injury occurred.” He provided a diagnosis of low back pain. The Board finds that the submission of this report does not establish appellant’s claim for a January 18, 2018 employment injury because the report is devoid of an opinion relating a diagnosed medical condition to the accepted January 18, 2018 employment incident. The Board has held that pain alone is a symptom, not a medical diagnosis.¹⁴ Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination.¹⁵ Moreover, as the report does not

⁹ *B.G.*, Docket No. 18-0784 (issued November 9, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

¹¹ *Julie B. Hawkins*, 38 ECAB 393 (1987).

¹² *John J. Carlone*, 41 ECAB 354 (1989).

¹³ *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁴ *See F.U.*, Docket No. 18-0078 (issued June 6, 2018).

¹⁵ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

offer an opinion addressing causal relationship it is of no probative value on the issue of causal relationship.¹⁶

In a January 22, 2018 duty status report, Dr. Braun listed the date of injury as January 18, 2018, provided a diagnosis “due to injury” of lumbar strain, and recommended work restrictions, including lifting no more than 20 pounds. Although this report contains an actual medical diagnosis, *i.e.*, lumbar strain, it is of limited probative value relative to the underlying issue of the present case because it does not contain a rationalized medical opinion relating this diagnosed condition to the accepted January 18, 2018 employment incident. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.¹⁷ Dr. Braun did not describe the January 18, 2018 employment incident in any detail or explain the medical process through which carrying magazines up stairs would have caused the diagnosed condition.¹⁸

In a January 22, 2018 work status discharge report, Dr. Braun listed the date of injury as January 18, 2018 and indicated that appellant should work under restrictions as of January 22, 2018. In a February 13, 2018 narrative report, he listed the date of injury as January 18, 2018 and diagnosed low back pain. However, these reports are of no probative value on the underlying issues of this case because Dr. Braun only diagnosed low back pain, which the Board has held is a symptom and not an actual diagnosis.¹⁹

In a January 23, 2018 report, Dr. Pinter indicated that appellant was seen four days prior with increased pain due to lifting heavy boxes at work and he diagnosed appellant with back paresthesias. However, this report is of limited probative value on the underlying issue of this case because Dr. Pinter failed to provide a clear, detailed description of the accepted January 18, 2018 employment incident and he did not otherwise provide a rationalized medical opinion relating a diagnosed medical condition to this accepted employment incident.²⁰

In March 6 and 21, 2018 narrative reports, Dr. Braun listed the date of injury as January 18, 2018 and diagnosed low back pain and strain of muscle, fascia, and tendon of lower back. In March 6 and 21, 2018 duty status reports, he listed a date of injury of January 18, 2018, provided a diagnosis “due to injury” of lumbar strain, and recommended work restrictions. In March 6 and 21, 2018 work status discharge reports, Dr. Braun listed the date of injury as January 18, 2018, diagnosed low back pain and lumbar strain, and indicated that appellant should work under

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

¹⁷ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹⁸ In a February 13, 2018 duty status report, Dr. Braun listed the date of injury as November 24, 2017, provided a diagnosis “due to injury” of lumbar strain, and recommended work restrictions. In a February 13, 2018 work status discharge report, he listed the date of injury as November 24, 2017, diagnosed low back pain, and indicated that appellant should work under restrictions as of February 13, 2018. However, the matter of the November 24, 2017 employment injury under OWCP File No. xxxxxx533 is not currently before the Board and none of these reports are relevant to appellant’s present claim for a January 18, 2018 employment injury.

¹⁹ See *supra* notes 14 and 15.

²⁰ See *supra* note 14.

restrictions. However, these reports also are of limited probative value in establishing appellant's claim for a January 18, 2018 employment injury because Dr. Braun failed to provide a rationalized medical opinion on causal relationship.²¹ Dr. Braun again failed to describe the January 18, 2018 employment incident in any detail or explain the medical process through which it would have been competent to cause a diagnosed back condition.²²

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 lumbar condition causally related to the accepted January 18, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy 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

²¹ See *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

²² Appellant also submitted a number of reports of medical providers, including those of an attending chiropractor, which were dated December 18, 2017 to January 9, 2018. However, because these reports predate the January 18, 2018 employment incident, they are irrelevant and therefore insufficient to establish appellant's claim.