United States Department of Labor
Employees' Compensation Appeals Board

T.C., Appellant	)	
and	)	**Docket No. 18-1498**
	)	**Issued: February 13, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 1, 2018 appellant filed a timely appeal from a July 16, 2018 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 that her diagnosed medical conditions were causally related to the accepted May 21, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the July 16, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On June 6, 2018 appellant, then a 23-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that, on May 21, 2018, she sustained injuries to her spine, left shoulder and arm, left hip and buttock, and left knee and leg when she was involved in a vehicular accident around 9:13 a.m. while in the performance of duty. Specifically, she noted that the injury occurred on her route when a third party ran a red light and hit her vehicle causing her vehicle to flip and hit a number of parked cars. The employing establishment did not dispute that appellant was injured in the performance of duty. Appellant stopped work on May 22, 2018.

In a note dated May 22, 2018, Dr. Joseph Kelberman, a chiropractor, indicated that appellant had sustained injuries to her full spine, left shoulder and arm, left hip and buttock, and left knee and leg. He noted that she was totally disabled from work.

In a work excuse note dated May 31, 2018, Dr. Vladimir Onefater, a physical medicine and rehabilitation specialist, noted that appellant was unable to perform the required duties of her job and could not return to work until her next evaluation on June 21, 2018.

In a development letter dated June 11, 2018, OWCP advised appellant of the deficiencies in her claim. It requested additional medical evidence to support her claim because she had provided neither a diagnosis of a medical condition nor a physician's opinion as to how the alleged incident resulted in a diagnosed condition. OWCP indicated that it had received medical reports signed by a chiropractor, but that a chiropractor did not qualify as a physician under FECA unless there is a diagnosed spinal subluxation and it is demonstrated by x-ray to exist. It provided appellant a factual questionnaire to complete. OWCP afforded him 30 days to submit the requested evidence.

In response, OWCP received additional reports from Dr. Onefater dated May 31, 2018 in which he noted appellant's history of injury, and her complaints of neck and left shoulder pain which he related to sprain/strains.

Appellant also submitted physical therapy notes dated May 31 through June 14, 2018.

OWCP also received a June 19, 2018 MRI scan report of appellant's cervical spine, a June 27, 2018 MRI scan report of the lumbar spine, and an electromyography and nerve conduction velocity (EMG/NCV) report dated June 21, 2018.

In a narrative medical report dated June 21, 2018, Dr. Onefater diagnosed left shoulder impingement, cervical strain/sprain, subacromial bursitis, left shoulder intrasubstance partial rotator cuff tear, and lumbosacral sprain/strain. In a duty status report (Form CA-17) dated June 29, 2018, Dr. Onefater noted that appellant may resume work on July 14, 2018.

By decision dated July 16, 2018, OWCP denied appellant's claim. It found that he had established that the incident occurred in the performance of duty, as alleged. However, OWCP denied appellant's claim in finding that the evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted May 21, 2018 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, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[7]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her diagnosed medical conditions were causally related to the accepted May 21, 2018 employment incident.

Dr. Onefater provided several reports to the record. In his May 31, 2018 report, he noted appellant's history of injury and that appellant was seen for pain in her neck, left shoulder, and low back, which he attributed to strain/sprain. The Board notes that the assessment of pain is not considered a diagnosis as it merely refers to symptoms of the underlying condition.[8] While Dr. Onefater also diagnosed strain/sprain, he offered no opinion regarding the cause of this

[3] *Supra* note 1.

[4] *D.K.*, Docket No. 17-1186 (issued June 11, 2018); *Gary J. Watling*, 52 ECAB 278 (2001).

[5] *D.K.*, *id.*; *Michael E. Smith*, 50 ECAB 313 (1999).

[6] *D.K.*, *supra* note 4; *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *D.K.*, *supra* note 4; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

diagnosis. 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.[9]

In a June 29, 2018 narrative report, Dr. Onefater reviewed MRI scan findings and diagnosed left shoulder impingement, cervical strain/sprain, subacromial bursitis, left shoulder intrasubstance partial rotator cuff tear, and lumbosacral sprain/strain. However, again, Dr. Onefater did not opine as to the cause of appellant's condition.[10] To be of probative medical value, a medical opinion must explain how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions.[11]

Appellant submitted a work excuse note from Dr. Kelberman, a chiropractor, dated May 22, 2018 in which he indicated that appellant had sustained injuries to her spine, left shoulder and arm, left hip and buttock, and left knee and leg. The Board finds that the note from Dr. Kelberman cannot be considered medical evidence under FECA because he did not diagnose a subluxation based upon x-ray evidence. Without a diagnosis of spinal subluxation from an x-ray, a chiropractor is not considered a physician as defined under FECA and thus his opinion does not constitute competent medical evidence.[12] As such, the note from Dr. Kelberman is of no probative value and, thus, is insufficient to establish the causal relationship.

Appellant also submitted reports from a physical therapist. However, physical therapists are not considered physicians as defined under FECA and therefore their opinions are of no probative value.[13]

OWCP also received MRI scan reports of the cervical spine dated June 19, 2018 and of the lumbar spine dated June 27, 2018, and an EMG/NCV report dated June 21, 2018. Diagnostic studies lack probative value on the issue of causal relationship as they do not address whether the employment incident caused a diagnosed condition.[14]

[9] *C.C.*, Docket No. 17-1841 (issued December 6, 2018); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[10] *Id.*

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

[12] *R.P.*, Docket No. 18-0860 (issued December 4, 2018); 20 C.F.R. § 10.5(bb); *see Mary A. Ceglia*, 55 ECAB 626 (2004).

[13] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005). *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[14] *R.B.*, Docket No. 18-1327 (issued December 31, 2018); *see C.D.*, Docket No. 17-2011 (issued November 6, 2018).

Appellant has the burden of proof to submit rationalized medical evidence establishing that her diagnosed medical conditions were causally related to the accepted May 21, 2018 employment incident.[15] She has not submitted such evidence and thus has not met her burden of proof.[16]

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 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 that her diagnosed medical conditions were causally related to the accepted May 21, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 2019
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

[15] *R.B., id.*; *see D.T.*, Docket No. 17-1734 (issued January 18, 2018).

[16] *R.B., supra* note 14; *see D.S.*, Docket No. 18-0061 (issued May 29, 2018).