United States Department of Labor
Employees' Compensation Appeals Board

K.J., Appellant	)	
and	)	**Docket No. 18-1520**
	)	**Issued: June 13, 2019**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, San Jose, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On August 3, 2018 appellant filed a timely appeal from a February 5, 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 to consider the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish lumbar and left leg conditions causally related to the accepted April 1, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. 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 April 24, 2017 appellant, then a 56-year-old transportation security officer/screener, filed a traumatic injury claim (Form CA-1) alleging that, on April 1, 2017 she sustained a herniated disc and a pinched nerve in her lower left leg and foot when she moved/lifted a heavy bag while in the performance of duty. She did not initially stop work.[3]

OWCP received April 11, 2017 discharge instructions from Kaiser Foundation Hospital, in which Dr. Ramavtar Singh, a Board-certified internist, indicated that appellant was seen for sciatica. It also received copies of x-rays dated April 12, 18, and 19, 2017.

In an April 19, 2017 e-mail, appellant informed her human resources advisor, A.C., that she wished to open a new claim for sciatica and pinched nerve. She explained that the pinched nerve began on April 2, 2017, and that she "never had this problem before." Appellant referred to her prior accepted employment injury under OWCP File No. xxxxxx361, and explained that while she had been approved for surgery her case needed to be reopened.

In a letter dated May 19, 2017, M.C., a human resources assistant, noted that appellant filed a new claim which was related to her previous claim OWCP File No. xxxxxx361. She explained that the 2011 injury left medical treatment open for a pending surgery, which was postponed. However, a new injury had developed "due to the residual injury."

In an April 17, 2017 report, Dr. James Nguyen, a Board-certified family practitioner, indicated that appellant was diagnosed with lumbar radiculopathy. He advised that she was undergoing treatment and that he had placed her off work for the period April 19 through June 13, 2017.

In an April 27, 2017 report, Dr. Justin Brink, a chiropractor, noted that in January 2014, a labrum tear was discovered in her right hip. He explained that appellant wanted to postpone surgery for as long as possible with conservative treatment. Dr. Brink indicated that appellant had received treatment on a regular basis since July 2016, to help manage her pain. He explained that appellant took a "treatment break" from January 5, 2017 and returned on March 9, 2017, with low back pain. Dr. Brink noted that appellant received treatment for a month, but her "symptoms progressively worsened," he suspected a lumbar disc injury, and referred her for a magnetic resonance imaging (MRI) scan. He opined that "the inevitable compensation of her posture and movement ultimately left her susceptible to low back injury."

A May 3, 2017 attending physician's report from Kaiser Permanente, revealed that appellant was seen on April 3, 6, 11, 12, 19, 25, and 27, and May 2, 2017 by Dr. Chitra Vijayaraghavan, a Board-certified family practitioner. She diagnosed left sacroiliac joint pain and buttock pain and recommended placing appellant off work for the period April 5 through 13, 2017.

[3] The record reflects that appellant has a prior claim for a traumatic injury on August 26, 2011. OWCP File No. xxxxxx361 which was accepted for tear of the right knee medial meniscus, right hip and thigh sprain, and right pelvic and thigh joint derangement.

In the same May 3, 2017 attending physician's report, Dr. Nguyen diagnosed chronic low back pain. He indicated that April 3, 2017, was the date symptoms first appeared or the accident happened and also indicated "no" in response to whether appellant had previously had the same or similar conditions. Dr. Nguyen recommended placing appellant off work through June 13, 2017.

In a June 7, 2017 primary treating physician's progress report, Dr. Thao Ngoc Pham, a Board-certified internist, noted an April 1, 2017 date of injury and diagnosed lumbar disc herniation and lumbar radiculopathy.

In a development letter dated June 20, 2017, OWCP advised appellant of the type of factual and medical evidence necessary to establish her traumatic injury claim. It afforded her 30 days to submit the necessary evidence.

In reports dated June 5 and 7, 2017, Dr. Pham noted that appellant indicated that she "picked up a very heavy piece of luggage that was marked over 70 [pounds]…." He explained that appellant's mechanism of injury was "cumulative picking up luggage from conveyor belt. Bags were marked over 70 pounds." Dr. Pham indicated that appellant complained of pain in the low back radiating to the left leg with numbness in the last toe. He explained that she denied prior relevant injuries and indicated that she had a prior work injury of a torn right meniscus and right hip injury. Dr. Pham diagnosed lumbar disc herniation and lumbar radiculopathy, and opined that the mechanism, specifically cumulative, was consistent with his clinical examination findings that demonstrated radicular pain, and no information has been presented that would indicate a cause other than the alleged employment event/exposure.

By decision dated July 31, 2017, OWCP accepted that the April 1, 2017 incident occurred as alleged, but denied the claim, finding that causal relationship had not been established between the diagnosed conditions and the accepted employment incident. On August 22, 2017 OWCP received appellant's request for a hearing, which was held on November 21, 2017.

OWCP received an April 11, 2017 MRI scan of the lumbar spine, read by Dr. Sridhar Reddi, a radiologist, that revealed an L5-S1 moderate sized left paracentral disc protrusion/extrusion, mild spinal stenosis, L4-5 moderate-to-severe facet arthropathy with grade 1 anterolisthesis, and mild spinal stenosis.

In a December 1, 2017 report, Dr. Nathaniel Cohen, a Board-certified orthopedic surgeon, noted that appellant was seen for right hip pain that began when she was run over by a cart at work on August 21, 2011. He noted the degenerative tear of the anterior superior labrum, moderate osteoarthritis, and areas of full-thickness cartilage loss. Dr. Cohen also found that appellant's gait was antalgic, but she was able to heel-and-toe-walk normally. He diagnosed a tear of the right acetabular labrum, subsequent encounter. Dr. Cohen opined that based on her original injury, she appears to have a compensatory lumbar issue due to altered gait.

In a December 21, 2017 report, Dr. Kenneth Blumenfeld, a Board-certified neurosurgeon, noted that in 2011 appellant was struck by a cart at work and sustained right hip and knee injuries. He also noted that it was unclear if she also sustained a low back injury at that time. Dr. Blumenfeld explained that from that point onward, appellant experienced mild, chronic low back pain and dysfunction. He indicated that she did not have sciatica or other leg symptoms.

Dr. Blumenfeld noted that appellant sought chiropractic treatment in 2015 for her low back and advised that her low back difficulties were exacerbated by her right hip issues. He diagnosed intervertebral disc disorder with radiculopathy of the lumbosacral region and spondylolisthesis of lumbar region.

Dr. Blumenfeld noted that on April 1, 2017, appellant went to lift a heavy bag at work and felt immediate low back pain and soreness that began radiating down the left leg and foot. He indicated that this was associated with paresthesias and numbness in a similar distribution and plantar flexion and explained that despite conservative measures, appellant continued to experience pain, paresthesias, and weakness in her left leg. Dr. Blumenfeld noted that appellant denied right leg symptoms other than those attributable to her known hip and knee problems. He examined appellant and indicated that the low back injury at work on April 1, 2017, resulted in persistent low back pain and development of left S1 radiculopathy with motor deficit within days. He referenced the April 2017 MRI scan documenting a large left L5-S1 disc extrusion, and opined "[c]onsequently, I believe there is little doubt that she suffered a work-related injury…." Dr. Blumenfeld indicated that appellant's condition should be accepted and opined that appellant had "mild chronic low back dysfunction and a degenerative spondylolisthesis at L4-5 that could be the consequence of her 2011 injury or the repetitive physical requirements of her job."

By decision dated February 5, 2018, OWCP's hearing representative affirmed the July 31, 2017 decision.[4]

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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 of FECA,[6] 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.[7] 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.[8]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[9] Generally, fact of

[4] OWCP's hearing representative instructed OWCP to combine the instant claim with OWCP File No. xxxxxx361.

[5] *Supra* note 1.

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

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

[8] *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).

[9] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[10] The second component is whether the employment incident caused a personal injury.[11] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[12]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[13] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[14] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[15]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[16]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish lumbar and left leg conditions causally related to the accepted April 1, 2017 employment incident.

OWCP received April 11, 2017 discharge instructions from Dr. Singh, who diagnosed sciatica, an April 17, 2017 report from Dr. Nguyen who diagnosed lumbar radiculopathy, and a June 7, 2017 report from Dr. Pham who diagnosed lumbar disc herniation and lumbar radiculopathy. These reports are insufficient to establish appellant's claim because they provided a diagnosis, but did not offer an opinion on causal relationship between the injury and appellant's back and hip conditions. The Board has held that medical evidence that does not offer an opinion

[10] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[11] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[12] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[13] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[14] *R.R., id.*; *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[15] *Id.; Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[16] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[17] These reports, therefore, are insufficient to establish appellant's claim.

In a May 2, 2017 report, Dr. Vijayaraghavan diagnosed left sacroiliac joint pain and buttock pain, and in a May 3, 2017 report, Dr. Nguyen, diagnosed chronic low back pain. The Board, however, has consistently held that pain is a symptom, not a compensable medical diagnosis.[18] Therefore, these medical reports are of no probative medical value.[19]

In reports dated June 5 and 29, 2017, Dr. Pham noted that appellant "picked up a very heavy piece of luggage that was marked over 70 [pounds]…," but further explained that appellant's mechanism of injury was "cumulative picking up luggage from conveyor belt. Bags were marked over 70 pounds." Dr. Pham also noted that appellant had a prior work injury of a torn right meniscus and right hip injury. He opined that the "stated mechanism, specifically cumulative, is consistent with my clinical examination findings that demonstrate radicular pain, and no information has been presented that would indicate a cause other than the alleged employment event/exposure." While Dr. Pham offered an opinion regarding causal relationship, his report is of limited probative value because he failed to explain with sufficient rationale how the April 1, 2017 employment incident caused or aggravated the diagnosed conditions.[20] Furthermore, he described a cumulative injury as opposed to a traumatic injury on April 1, 2017. A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.[21] The Board thus finds that Dr. Pham's reports are insufficient to establish appellant's claim.

In a December 1, 2017 report, Dr. Cohen referred to appellant's injury at work on August 21, 2011. He diagnosed a tear of the right acetabular labrum, subsequent encounter, and opined that "[b]ased on her original injury, she appears to have a compensatory lumbar issue due to altered gait." The Board notes that this report is deficient, as he does not offer an opinion that appellant sustained a condition causally related to the April 1, 2017 employment incident.[22]

In a December 21, 2017 report, Dr. Blumenfeld referred to appellant's 2011 employment injury and the April 1, 2017 employment incident. He opined "I believe there is little doubt that she suffered a work-related injury …" and that appellant had "mild chronic low back dysfunction and a degenerative spondylolisthesis at L4-5 that could be the consequence of her 2011 injury or the repetitive physical requirements of her job." The Board finds that report is insufficient as the report does not reference the April 1, 2017 traumatic injury. Dr. Blumenfeld's opinion that

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

[18] *See K.V.*, Docket No. 18-0723 (issued November 9, 2018 (regarding pain); *J.S.*, Docket No. 07-0881 (issued August 1, 2007) (regarding spasm).

[19] *See S.Y.*, Docket No. 18-1814 (issued April 18. 2019).

[20] *See J.M.*, Docket No. 17-1002 (issued August 22, 2017).

[21] *See id*.

[22] *See supra* note 17.

appellant's condition "could be the consequence" of her 2011 injury and repetitive job requirements, is also speculative. The Board has held that speculative and equivocal medical opinions regarding causal relationship have no probative value.[23] For these reasons, the Board finds that the evidence from Dr. Blumenfeld is insufficient to establish that appellant's diagnosed conditions are causally related to lifting a 70-pound bag at work.

The record also contains an April 27, 2017 report from a chiropractor, Dr. Brink, who treated appellant for low back and hip pain since July 13, 2016. As the medical evidence of record does not establish that Dr. Brink diagnosed spinal subluxations by x-ray, he is not considered a physician under FECA and his opinion is of no probative medical value.[24]

Finally, the Board notes that OWCP received a number of diagnostic test reports. However, the Board has held that diagnostic reports lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and a diagnosed condition.[25]

Because the medical reports submitted by appellant do not establish that the accepted April 1, 2017 employment incident caused or aggravated a lumbar condition, these reports are of limited probative value, and are insufficient to establish appellant's claim.[26]

The Board thus finds that appellant has not met her burden of proof as the medical evidence of record is insufficient to establish that her diagnosed medical conditions were causally related to the accepted April 1, 2017 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 lumbar and left leg conditions causally related to the accepted April 1, 2017 employment incident.

[23] *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[24] Section 8101(2) of FECA provides that medical opinion, in general, can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. Section 8101(3) of FECA, which defines services and supplies, limits reimbursable chiropractic services to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary. 5 U.S.C. § 8101(3). *See Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

[25] *See S.G.*, Docket No. 17-1054 (issued September 14, 2017).

[26] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

ORDER

IT IS HEREBY ORDERED THAT the February 5, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board