United States Department of Labor
Employees' Compensation Appeals Board

M.V., Appellant	)	
and	)	**Docket No. 19-1515**
	)	**Issued: January 2, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Easton, MD, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 8, 2019 appellant filed a timely appeal from a June 18, 2019 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.

ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to the accepted May 2, 2018 employment incident.

FACTUAL HISTORY

On May 25, 2018 appellant, then a 57-year-old bulk mail technician, filed a traumatic injury claim (Form CA-1) alleging that on May 2, 2018 she injured her lower back taking flat tubs from a bulk mail container (BMC) while in the performance of duty. On the reverse side of the

[1] 5 U.S.C. § 8101 *et seq.*

claim form, the employing establishment indicated that she was injured in the performance of duty. Appellant stopped work on May 2, 2018.

In an accompanying statement, appellant provided that, as she was emptying the BMC of flat tubs on May 2, 2018, she felt a sharp pain shoot down her back. The pain worsened as she continued to break down the rest of the flats and sort packages. Appellant performed her duties through her pain, but she eventually stopped work in order to allow her back to rest. When she returned to work on May 14, 2018 and tried to move another flat, she noted that her back pain was much worse. Appellant explained that she then went to her physician who advised that she could only lift up to 20 pounds, and he referred her for further orthopedic evaluation.

In a May 14, 2018 note, Dr. Eric Hermansen, a Board-certified internist, provided that due to appellant's back pain and an ongoing evaluation of her back pain, she was advised not to lift weights greater than 20 pounds until she was seen and evaluated by orthopedics.

In a development letter dated May 14, 2019, OWCP informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus, limited expenses had therefore been authorized. However, a formal decision was now required. OWCP advised appellant of the type of factual and medical evidence required to establish her traumatic injury claim and provided a factual questionnaire inquiring about the circumstances surrounding her claimed injury for her completion. It also requested a narrative medical report containing a firm diagnosis from her physician. OWCP afforded appellant 30 days to respond.

In response to OWCP's questionnaire, appellant submitted a May 18, 2019 statement wherein she provided that on May 2, 2018 she had performed several twisting and turning motions in order to move approximately six to eight flat tubs weighing approximately 30 pounds. She explained that she now experienced sharp pains in her back and that she was unable to continue her work as a result.

In a May 14, 2018 report, Dr. Hermansen noted that appellant had been experiencing back pain in her midline lumbar area since the May 2, 2018 employment incident. On evaluation he noted that her lumbar/lumbosacral spine exhibited abnormalities and discrete pain at L3-4. Appellant had full flexion and extension, and negative straight leg raising. Her neurological evaluation revealed normal motor strength and normal deep tendon reflexes. Dr. Hermansen diagnosed lumbar radiculopathy and referred her to orthopedics for further evaluation. He also prescribed pain medication.

By decision dated June 18, 2019, OWCP accepted that the May 2, 2018 employment incident occurred as alleged, but denied appellant's claim because the medical evidence of record did not include a diagnosis in connection with the accepted employment incident. Consequently, it found that appellant had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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,[3] 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.[4] 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.[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. 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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background of the employee, 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.[7] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted May 2, 2018 employment incident.

On May 14, 2018 Dr. Hermansen provided both a medical report and a note with work restrictions. The latter note indicated that appellant was being evaluated for back pain and should

[2] *Id*.

[3] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[5] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[8] *Id.*; *James Mack*, 43 ECAB 321 (1991).

not lift in excess of 20 pounds. Dr. Hermansen's May 14, 2018 treatment notes indicated that she had been experiencing back pain since May 2, 2018 when she reportedly injured her back lifting packages all day at work. Physical examination of the lumbar spine revealed "discrete pain" at L3-4, full flexion and extension, and negative straight leg raising. Appellant's neurological examination revealed normal strength (motor), balance, and deep tendon reflexes. Dr. Hermansen provided an assessment of lumbar radiculopathy and also noted that her lumbar x-rays were routine.

The Board has consistently held that pain is a symptom, not a specific medical diagnosis.[9] In his May 14, 2018 report and work note, Dr. Hermansen variously described back pain, discrete pain at L3-4, and lumbar radiculopathy. However, he did not provide a specific medical diagnosis, which might otherwise account for appellant's low back pain and radiculopathy. In fact, Dr. Hermansen referred her for further evaluation by an orthopedist to determine the cause and extent of her low back complaints. Accordingly, his assessment of lumbar pain and radiculopathy alone was insufficient to establish appellant's claim.[10]

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition causally related to the accepted May 2, 2018 employment incident.[11] Appellant therefore has not met her burden of proof.

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 an injury causally related to the accepted May 2, 2018 employment incident.

[9] *M.M.*, Docket No. 16-1617 (issued January 24, 2017); *K.B.*, Docket No. 16-0122 (issued April 19, 2016); *Robert Broome*, 55 ECAB 339 (2004); *see also* Federal (FECA) Procedural Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4(a)(6) (August 2012).

[10] *See id.*

[11] *See T.J.*, Docket No. 18-1500 (issued May 1, 2019); *D.S.*, Docket No. 18-0061 (issued May 29, 2018).

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 2, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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