United States Department of Labor
Employees' Compensation Appeals Board

A.R., Appellant	)	
and	)	**Docket No. 18-1339**
	)	**Issued: May 19, 2020**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Oakland, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 25, 2018 appellant filed a timely appeal from a March 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 over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a low back injury causally related to the accepted October 14, 2017 employment incident.

FACTUAL HISTORY

On October 14, 2017 appellant, then a 54-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her low back while in

[1] 5 U.S.C. § 8101 *et seq.*

the performance of duty. Her supervisor, C.M., noted that she had complained of back pain when asked to assist in another location. C.M. maintained that the accident occurred due to appellant's willful misconduct. Appellant stopped work on October 14, 2017.

In a development letter dated October 30, 2017, OWCP advised appellant of the deficiencies of her claim. It specifically noted that there was no medical evidence supporting a diagnosis resulting from the alleged injury. OWCP also requested that appellant respond to a questionnaire to substantiate the factual elements of her claim. It afforded her 30 days to submit the requested information.

Subsequently, OWCP received an October 14, 2017 report from Dr. Andreas Tjoe, Board-certified in emergency medicine, who treated appellant for right low back pain radiating into the right foot which had begun at work. Appellant did not recall how the symptoms began, but noted that her work involved patting people down and lifting luggage. Findings on examination revealed right-sided paravertebral tenderness in the low back. Dr. Tjoe diagnosed lumbosacral strain and a mild herniated disc. In a work status note of even date, he excused appellant from work until October 16, 2017.

On October 15, 2017 the employing establishment issued an authorization for examination and/or treatment (Form CA-16) for medical care.

An attending physician's report (Part B of a Form CA-16) dated October 16, 2017, noted that Dr. Walter Panganiban, Board-certified in family medicine, treated appellant for a lifting injury. Dr. Panganiban diagnosed lumbar disc disease. He checked a box marked "yes" that appellant's condition was caused or aggravated by an employment activity, noting that "she was lifting heavy luggage." Dr. Panganiban found that appellant was totally disabled from October 16 to 20, 2017.

In an accompanying doctor's first report of injury form dated October 16, 2017, Dr. Panganiban noted that he had evaluated appellant for lower back numbness, pain, and tingling. He obtained a history of her sustaining an injury to her lower back on October 14, 2017 when she performed extensive lifting, bending, and repetitive motion as a screener. On examination Dr. Panganiban found tenderness on the right side of the lumbar spine, limited range of motion, antalgic gait, positive straight leg raising on the right, absent ankle reflex on the right, weakness in dorsiflexion of the right foot, difficulty in toe and heel walking, and numbness of the right leg. He diagnosed intervertebral disc disorders with myelopathy of the lumbar region. Dr. Panganiban responded in the affirmative that his findings and diagnosis were consistent with appellant's account of injury.

In an accompanying duty status report (Form CA-17) also dated October 16, 2017, Dr. Panganiban noted clinical findings of back and leg pain with weakness and diagnosed lumbar disc disease. He found that appellant was disabled from work. In a work status report of even date, Dr. Panganiban diagnosed lumbar intervertebral disc disorder with myelopathy and found that she was temporarily disabled beginning October 16, 2017.

An x-ray of the lumbar spine dated October 16, 2017 was read as unremarkable. A magnetic resonance imaging (MRI) scan of the lumbar spine dated October 23, 2017 demonstrated

a focal posterior central disc herniation at L5-S1 with a herniated disc fragment making contact with the right S1 nerve root.

In progress reports dated October 20 and 23, 2017, Dr. Panganiban discussed appellant's complaints of continued back pain radiating into the right lower extremity. He diagnosed lumbar intervertebral disc disorders with myelopathy. In work status reports of even date, Dr. Panganiban advised that appellant was disabled from employment.

On October 27, 2017 Dr. Michael E. Tseng, a Board-certified orthopedist, treated appellant for low back pain. He noted that on October 14, 2017, during a busy work shift, appellant had experienced a stabbing pain in her low back and buttocks, with right leg numbness. Findings on examination revealed midline tenderness to palpation of the thoracic and lumbar spine, restricted range of motion, mild motor deficit on the right side, and intact sensation to light touch at L2-S1 distribution. Dr. Tseng diagnosed low back pain and an L5-S1 herniated disc with right L5-S1 radiculopathy by MRI scan. He noted that during the course of work appellant had developed acute back pain and right leg pain, numbness, and weakness. Dr. Tseng recommended medications for inflammation and found that she should remain off work.

In a progress report dated November 7, 2017, Dr. Tseng again noted the history of the claimed October 14, 2017 employment incident and advised that appellant continued to experience pain in her lower back. He noted that her condition had improved and referred her for physical therapy. In work status notes dated October 27 and November 7, 2017, Dr. Tseng advised that appellant was disabled for the period October 27 to December 5, 2017.

In a statement dated November 21, 2017, appellant noted that at the time of the injury she was performing her regularly assigned duties and due to a shortage of female staff she was working in all areas that needed a female employee. She reported having no similar disability or symptoms prior to the claimed incident.

By decision dated December 5, 2017, OWCP denied appellant's claim for compensation finding that she had not factually established the occurrence of the claimed employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 21, 2018 appellant requested reconsideration.

In a statement dated February 16, 2018, appellant indicated that on October 14, 2017 she was the only female on the shift. She was initially placed on the advanced image technology machine for 25 minutes and then rotated to the position of bag checker to be available for all pat downs, bag checks, and additional screening at the checkpoint. Appellant advised that she had remained in this position for five hours without rotation or breaks.

On November 28, 2017 Dr. Tseng evaluated appellant for nerve pain in the right leg. He reviewed her history of the onset of stabbing low back pain on October 14, 2017 while working a busy shift. Dr. Tseng provided examination findings and diagnosed low back pain and a herniated L5-S1 disc with right radiculopathy at L5-S1. In a primary treating physician's progress report form of even date he diagnosed intervertebral disc disorder of the lumbar spine with myelopathy and lumbar disc displacement, noting that imaging studies demonstrated a herniated disc.

Dr. Tseng indicated that appellant's right leg pain had improved, but she continued to have right leg and right foot weakness. In a work status form dated November 28, 2017, he advised that she was disabled from November 28, 2017 to January 9, 2018.

On December 12, 2017 Dr. Tseng provided the history of appellant's claimed October 14, 2017 employment incident and findings on physical examination. He diagnosed low back pain and a herniated L5-S1 disc with right radiculopathy. Dr. Tseng found that appellant could resume work for four hours per day with restrictions of no lifting, pulling, or pushing over five pounds. In a primary treating physician's progress report form of even date, he diagnosed lumbar intervertebral disc disorder with myelopathy and lumbar disc displacement. On December 15, 2017 Dr. Tseng returned appellant to work without restrictions.

By decision dated March 5, 2018, OWCP modified the December 5, 2017 decision to find that appellant had factually established the occurrence of the October 14, 2017 employment incident. It found, however, that the medical evidence of record was insufficient to establish that she sustained an injury or medical condition causally related to the accepted employment incident.

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 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 and/or specific 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.[6] There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8]

[2] *Id.*

[3] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

[5] *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Gary J. Watling*, 52 ECAB 357 (2001).

[6] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

[7] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[8] *T.H.*, *supra* note 6.

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, 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.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a low back injury causally related to the accepted October 14, 2017 employment incident.

The only medical evidence addressing causation is an attending physician's report (Part B of a Form CA-16 report) dated October 16, 2017 from Dr. Panganiban, who diagnosed lumbar disc disease.[10] Dr. Panganiban checked a box marked "yes" that appellant's condition was caused or aggravated by an employment activity, noting that she had lifted heavy luggage. He found that she was totally disabled from October 16 to 20, 2017. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[11] Dr. Panganiban did not explain the reasons why lifting heavy luggage caused or contributed to a diagnosed medical condition; consequently, his report is insufficient to meet appellant's burden of proof.[12]

The remaining reports of record fail to address causation. On October 27, 2017 Dr. Tseng obtained a history of appellant experiencing stabbing pain in her low back and buttocks and right leg numbness on October 14, 2017 while working a busy shift. He diagnosed low back pain and a herniated disc at L5-S1 with right radiculopathy as demonstrated by MRI scan. Dr. Tseng indicated that appellant's back pain and right leg numbness, weakness, and pain had begun while she was performing work. While he noted a temporal relationship, the Board has held that the mere fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship, temporal relationship alone will not suffice.[13] As Dr. Tseng failed to specifically address whether the diagnosed conditions were causally related to the October 14,

[9] *H.B.*, Docket No. 18-0781 (issued September 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] The Board notes that the employing establishment issued a Form CA-16. A properly executed Form CA-16 may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

[11] *See R.G.*, Docket No. 18-0236 (issued December 17, 2019); *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

[12] *Id*.

[13] *L.L.*, Docket No. 16-0896 (issued September 13, 2016).

2017 employment incident, his opinion is of no probative value on the issue of causal relationship.[14]

In an October 16, 2017 report, Dr. Panganiban indicated that appellant had injured her low back on October 14, 2017 while performing repetitive motion, including lifting and bending, while working as a screener. He diagnosed lumbar intervertebral disc disorders with myelopathy. Dr. Panganiban noted that his findings and the diagnosis were consistent with appellant's account of injury, but did not otherwise address causation. Consequently, his opinion is of no probative value regarding the causal relationship between the diagnosis and the accepted employment incident.[15]

In a report dated October 14, 2017, Dr. Tjoe evaluated appellant for right lower back pain radiating into her foot which had begun that day at work. He advised that she had not identified an incident as causing the onset of symptoms, but was lifting luggage and patting down passengers at the time. Dr. Tjoe diagnosed lumbosacral strain and a mild herniated disc. However, he merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether her condition was work related. The mere recitation of patient history does not suffice for purposes of establishing causal relationship between a diagnosed condition and the employment incident.[16] As noted above, a medical report that does not provide an opinion on the issue of causal relationship is of no probative value.[17]

In progress reports dated November 7 and 28, and December 12, 2017, Dr. Tseng provided a history of the October 14, 2017 employment incident and described findings on examination. He diagnosed low back pain and a herniated L5-S1 disc with right radiculopathy. In form reports of even date, Dr. Tseng diagnosed lumbar intervertebral disc disorder with myelopathy and lumbar disc displacement. On October 20 and 23, 2017 Dr. Panganiban noted that appellant had continued back pain radiating into the right lower extremity and diagnosed lumbar intervertebral disc disorders with myelopathy. In these reports, however, Dr. Tseng and Dr. Panganiban did not specifically address whether appellant's employment incident caused or aggravated a diagnosed medical condition, and thus this evidence is of no probative value and insufficient to meet her burden of proof.[18]

Appellant submitted Form CA-17 and work status reports dated October 14 through November 28, 2017 addressing her physical limitations. These reports are of no probative value

[14] *C.H.*, Docket No. 19-1475 (issued February 6, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *M.D.*, Docket No. 17-0430 (issued August 21, 2017); *see also L.B. and D.K., id.*

[16] *R.G.*, *supra* note 11; *J.G.*, Docket No. 17-1382 (issued October 18, 2017).

[17] *A.P.*, Docket No. 19-1158 (issued October 29, 2019).

[18] *L.B.*, *supra* note 14.

as they fail to provide a physician's opinion on a causal relationship between the accepted employment incident and a diagnosed condition.[19]

Appellant submitted an x-ray of the lumbar spine dated October 16, 2017 and a lumbar MRI scan of the lumbar spine dated October 23, 2017. However, the Board has long held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment incident caused a diagnosed condition.[20]

On appeal appellant reiterated the factual elements of her claim. She indicated that she had injured her low back while in the performance of duty and had submitted evidence in support of her claim. As found above, however, appellant has not submitted rationalized medical evidence sufficient to establish causal relationship and thus has not met her burden of proof.[21]

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 low back injury causally related to the accepted October 14, 2017 employment incident.

ORDER

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

Issued: May 19, 2020
Washington, DC

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

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

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

[19] *Id.*

[20] *See L.F.*, Docket No. 18-0530 (issued February 24, 2020).

[21] *See E.J.*, Docket No. 19-0952 (issued November 5, 2019).