

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

EMILY C. SORIO, Appellant)

and)

DEPARTMENT OF JUSTICE, BUREAU OF)
PRISONS, FEDERAL CORRECTIONAL)
INSTITUTION, Petersburg, VA, Employer)
_____)

**Docket No. 05-1151
Issued: September 8, 2005**

Appearances:
Emily C. Sorio, *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 27, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 4, 2005, finding that she had not established an injury on December 3, 2004. Pursuant to 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 that she sustained an injury in the performance of her federal duties.

FACTUAL HISTORY

On December 6, 2004 appellant, then a 50-year-old health system's specialist, filed a traumatic injury claim stating that on December 3, 2004 while lifting two buckets of mail with holiday cards and magazines, she hurt her lower and upper back. She stopped work on December 6, 2004.

In a report dated December 10, 2004, Dr. Mathias M. Pastore, a chiropractor, stated that appellant was treated for back pain and placed on total disability as of December 6, 2004. In a report received by the Office on December 15, 2004, he diagnosed spinal subluxation but did not address x-ray evidence to support the diagnosis. In a January 10, 2005 report, Dr. Pastore again noted subluxation of the spine but did indicate that he reviewed any x-rays.

On January 12, 2005 appellant submitted a Form CA-7 claim for compensation for January 18 to February 4, 2005. In a report dated January 17, 2005, Dr. Pastore stated that she was undergoing progressive spinal stabilization exercises. Appellant remained on total disability.

By letter dated January 28, 2005, the Office advised appellant that the information submitted was not sufficient to determine whether she was eligible for benefits. It advised her to submit medical and factual evidence, including a detailed narrative report from her physician that included a history of the injury a firm diagnosis of any condition resulting from this injury, and an opinion on whether any diagnosed condition was caused or aggravated by the claimed injury. In a letter dated January 28, 2005, the Office advised appellant that under the Federal Employees' Compensation Act,¹ chiropractic services are limited to manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. She was advised that, if her chiropractor diagnosed anything other than a subluxation, such diagnosis must be confirmed by a physician.

Dr. Pastore subsequently submitted an attending physician's report dated January 21, 2005, in which he stated that appellant's condition was unchanged from December 10, 2004. He checked a box "yes," indicating that her condition was caused or aggravated by employment and that she was totally disabled from December 6, 2004. On January 27, 2005 appellant submitted a Form CA-7 claim for compensation for February 7 to 18, 2005. In an attending physician's report dated February 9, 2005, Dr. Manu Gadani, an internist, stated that appellant had back pain. Regarding whether her condition was causally related, he stated that the cause was "unknown" and referred her to Dr. Karanvir V. Prakash, a Board-certified orthopedic surgeon.

In a report dated February 9, 2005, Dr. Prakash stated that appellant had neck and back pain based on a December 3, 2004 injury when she lifted buckets of mail. He requested authorization for a magnetic resonance imaging (MRI) scan. In a duty status report dated February 9, 2005, Dr. Prakash stated that "patient was sent for diagnosis." He indicated that appellant was released to return to light duty on that date. Dr. Prakash checked "yes" to a question on the causal relationship of appellant's injury and her employment. In an attending physician's report dated February 16, 2005, he checked a box "yes" indicating that appellant's neck pain and possible fibromyalgia were causally related to employment.

In a report dated February 17, 2005, Dr. Prakash stated that an MRI scan revealed C5-6 and C6-7 disc changes and L5-S1 facet joint changes with a central disc herniation. He diagnosed fibromyalgia with generalized degenerative joint disease of the lumbar and cervical spine which was causing pain. Dr. Prakash also noted a herniated disc but opined that it was not causing pain. Appellant's cervical spondylosis was arthritic in nature. Dr. Prakash

¹ 5 U.S.C. § 8193.

recommended physical therapy and chiropractic treatment. The record includes a February 15, 2005 MRI scan which revealed mild degenerative changes in the cervical spine, worst at C5-6 level. Dr. Prakash released appellant to full duty beginning February 26, 2005.

By decision dated March 4, 2005, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that her medical condition was causally related to her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing 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 the Act, that the claim was filed within the applicable time limitation of the Act, 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 are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office 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.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.⁵ The weight of the medical evidence is determined by its reliability, its

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Id.*

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

The evidence establishes that the lifting incident occurred on December 3, 2004 as alleged. The Board finds, however, that appellant has not submitted sufficient medical evidence to establish a causal relationship between her diagnosed medical condition and the December 3, 2004 employment incident.

The record includes reports from Dr. Pastore, a chiropractor, dated December 10, 2004, January 17 and 21, 2005 and his treatment records. Under section 8101(2) of the Act, “[t]he term “physician” includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary.”⁷ In order for Dr. Pastore to be considered a “physician” under the Act and, therefore, establish his reports as probative medical evidence, he must diagnose a subluxation as demonstrated by x-ray. However, he did not state that the diagnosis of subluxation was demonstrated by x-ray to exist.⁸ Accordingly, the Board finds that Dr. Pastore is not a “physician” under the Act and his reports are of no probative medical value.

Dr. Gadini's February 9, 2005 report does not support causal relationship, but instead advised that it was “unknown” whether appellant's employment caused her back condition.

In a duty status report dated February 9, 2005, Dr. Prakash stated that “patient was sent for diagnosis.” He indicated that appellant was released to return to light duty on that date. Dr. Prakash checked “yes” to a question on the causal relationship of her injury and her employment. In his February 9, 2005 form report, Dr. Prakash indicated by checking a box “yes” that appellant's lumbar and cervical spine condition was causally related to the December 3, 2004 incident. However, when a physician's opinion supporting causal relationship consists only of checking “yes” to a form question, that opinion has little probative value and is insufficient to establish a causal relationship.⁹ Additionally, Dr. Prakash February 9, 2005 report in which he stated that appellant's neck and back pain were caused by her December 3, 2004 injury was not supported by rationale explaining the medical reasons for his opinion on causal relationship between her condition and her employment.¹⁰ He did not provide a rationalized

⁶ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁷ 5 U.S.C. § 8101(2); *Carmen Gould*, 50 ECAB 504 (1999).

⁸ The Board notes that while Dr. Pastore's treatment records diagnose subluxation of the spine, he did not indicate that this diagnosis was based on x-rays.

⁹ *Gary J. Watling*, 52 ECAB 2878 (2000).

¹⁰ *Annie L. Billingsley*, 50 ECAB 210 (1998).

medical opinion addressing the MRI scan or explaining how her lumbar and cervical disc conditions were caused or aggravated by the lifting incident.¹¹

There is no medical evidence before the Board which explains how the December 3, 2004 incident caused or aggravated appellant's bad condition. The medical evidence submitted does not specifically address causal relationship or fails to include a rationalized medical opinion establishing a causal relationship. Because there is no medical evidence explaining how the lifting incident caused or aggravated her diagnosed conditions appellant has not met her burden of proof in establishing her claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.¹²

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 4, 2005 is affirmed.

Issued: September 8, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹¹ *Id.*

¹² The Board notes that this case record contains evidence which was submitted to the Board that was not before the Office at the time of its last decision on March 4, 2005. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).