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SANTIAGA COMERFORD, Appellant)	
)	
and)	Docket No. 05-1158
)	Issued: September 9, 2005
DEPARTMENT OF THE NAVY, NAVAL)	
HOSPITAL, CAMP LEJEUNE, NC,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

On April 28, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated April 11, 2005, in which the Office denied that certain claimed conditions were causally related to her employment injury.¹ Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these issues.

The issue is whether appellant met her burden of proof to establish that her lumbar disc bulge, lumbar degenerative disease, cervical degenerative disc disease, cervical spondylosis, carpal tunnel syndrome, depression and tremors are causally related to her accepted employment injury.

¹ The record also contains a separate decision also dated April 11, 2005, which denied appellant's request for continuation of pay for the period March 28, 2002 to May 13, 2005. However, on appeal, appellant's representative indicated that they were only appealing those conditions that were not accepted by the Office, which included the cervical degenerative disc disease, cervical spondylosis, carpal tunnel syndrome, depression and tremors.

FACTUAL HISTORY

On April 22, 2002 appellant, then a 43-year-old food service worker, filed a traumatic injury claim alleging that on March 27, 2002 she slipped on ice as she stepped into a freezer. She reported bumping her head after slipping and falling backwards. Appellant stopped work on March 27, 2002 and returned on April 3, 2002.

In support of her claim appellant submitted an April 20, 2002 return to work slip from a nurse, indicating that appellant could do light duty; a May 14, 2002 treatment note from a provider of unknown specialty, which provisionally diagnosed lumbar back pain and neck pain; a May 15, 2002 disability certificate, with an illegible signature placing appellant on light duty for six weeks, several treatment notes dated May 23, 2002, which were illegible, several emergency room reports also dated May 23, 2002, indicating that appellant was seen for back pain, fungus of the toes and a nerve injury and a May 8, 2002 magnetic resonance imaging (MRI) scan read by Dr. Dallas A. Smith, a Board-certified diagnostic radiologist, which diagnosed degenerative disc disease L5-S1, mild facet arthropathy and disc protrusion.

Appellant also submitted a June 7, 2002 duty status report from a physician, whose signature is illegible, who noted chronic right hand pain and numbness and diagnosed sacroilitis, carpal tunnel syndrome and neck pain. The doctor prescribed restrictions which limited appellant to part-time work of no more than four hours a day.

By letter dated May 7, 2002, the Office requested that appellant submit additional evidence.

By decision dated June 17, 2002, the Office denied appellant's claim for compensation as the medical evidence was insufficient to establish that her condition was caused by the injury.

By letter dated June 16, 2003, appellant's representative requested reconsideration and submitted additional evidence.

The additional evidence included a March 27, 2002 emergency room report from William C. Fruedenthal, a physician of unknown specialty, which indicated that appellant slipped and fell in the freezer at work and diagnosed back strain and April 20, 2002 treatment notes for back and calf pain from a nurse practitioner. She also submitted a May 3, 2002 report, in which Dr. Robert L. Ringler, a Board-certified family practitioner, indicated that appellant came in for follow up of neck, back and hand pain, a September 13, 2002 report from an unknown provider, who noted symptoms of lower back pain, neck pain and depression, a September 16, 2002 report, from an unknown provider who indicated that appellant had carpal tunnel syndrome and a cervical sprain.

Appellant also submitted several reports from Dr. Clarence E. Ballenger, a Board-certified neurologist, they included a July 19, 2002 report, in which Dr. Ballenger advised that appellant related that she fell back on March 27, 2002 and hit the back of her head, subsequently noting tremulousness of the left arm as well as hand numbness in the right arm greater than the left, with decreased range of motion of her neck. He indicated that she previously had no real history of any "Lhermittish-type signs or symptoms or any history of bowel or bladder

incontinence” and that she was plagued with severe headaches since the fall that did not radiate into the neck, but could also be bitemporal. Dr. Ballenger noted that appellant indicated that she did not have these symptoms or any history of carpal tunnel syndrome, thyroid disease, tremors or anemia prior to the fall. Dr. Ballenger opined that appellant was depressed and had carpal tunnel syndrome and decreased range of motion of the neck and recommended an uncontrasted computerized tomography (CT) scan, and cerebellar testing, along with x-rays and an electromyogram (EMG) and nerve conduction studies. In an addendum of the same date, Dr. Ballenger advised that the CT scan was unremarkable, as was the cervical spine film and recommended that appellant continue her medications. In a December 30, 2002 report, he added that appellant had chronic cervical strain and some degenerative changes on her MRI scan of the cervical spine; however, he could not say that the “wreck per se caused these, but could certainly exacerbate any underlying problems she might have had....” Dr. Ballenger also advised that he was uncertain as to the etiology of her tremors.

Appellant also submitted a July 13, 1999 lumbar spine x-ray read by Dr. Walter C. Whitehurst, a Board-certified diagnostic radiologist, which revealed a mild disc bulge at L5-S1, with no central canal stenosis or herniated disc identified and a March 5, 2003 x-ray of the spine, read by Dr. Donald C. Jackson, a Board-certified diagnostic radiologist, who noted an L5-S1 central disc protrusion on the left with foraminal narrowing.

In a February 6, 2004 statement, appellant described her employment injury and conditions she believed arose from the injury.

By decision dated March 16, 2004, the Office denied modification of the June 17, 2002 decision. The Office found that appellant had not established that her diagnosed conditions were caused by the work incident of March 27, 2002.

Subsequent to this decision the Office received a June 28, 2003 MRI scan read by Dr. A. James Beyer, a Board-certified diagnostic radiologist, which revealed mild disc bulging at multiple levels in the cervical spine without evidence of disc herniation, central spinal stenosis or neural foraminal stenosis.

In an August 6, 2004 report, Dr. Ballenger indicated that appellant had contacted him regarding her claim, which was denied because he said that her fall had nothing to do with her condition. Dr. Ballenger opined that he would “go ahead and say that the fall caused her problems.”

Appellant also submitted copies of previously submitted documents, an additional statement dated August 15, 2004 regarding her claim, a copy of a September 18, 2002 letter from her employer terminating her due to being medically unfit for her position, a copy of a performance evaluation and a copy of a letter from the employing establishment advising appellant that no positions were available.

By letter dated January 26, 2005, appellant’s representative requested reconsideration.

By letter dated March 8, 2005, the Office requested additional information from appellant. The Office noted that the lumbar MRI scan performed on July 9, 1999 clearly showed that appellant had a bulging disc at L5-S1 and requested medical documentation dating back to

1999 or earlier in order to compare whether the fall changed the natural progression of her preexisting conditions.

By letter dated March 16, 2005, appellant's representative responded by noting his view of the medical evidence and by submitting evidence, some of which were previously submitted. The new reports included treatment notes dating from 1998 to 1999 from a provider whose signature is illegible showing that appellant was treated for chronic lumbosacral strain and residuals of rheumatic disease, spondylosis without spondylolisthesis, radiculopathy and the appearance of a bulging disc at L5-S1, an April 30, 1999 report, which was unsigned and showed that appellant had a fall in 1995, a September 27, 2001 treatment note showing treatment for low back pain and shoulder pain.² A July 7, 2000 x-ray report from Dr. Keith T. Chesser, a Board-certified diagnostic radiologist, noted spondylosis at C4-5 and C5-6, while an April 12, 2001 report from Dr. Chesser advised that appellant had whiplash from a motor vehicle collision three days earlier and reported mild spondylosis and early degenerative facet arthrosis at L5-S1. April 8, 2002 x-rays of the lumbar spine were normal. May 3, 2002 x-rays of the cervical spine read by Dr. Ian R. Graham, a Board-certified diagnostic radiologist, showed early degenerate changes without evidence of acute processes. In an August 28, 2002 report, Dr. Ballenger advised that an MRI scan showed spondylosis and bulging disc at multiple levels and mild central disc stenosis, which appellant indicated occurred after the fall.

By decision dated April 11, 2005, the Office vacated the June 17, 2002 decision and accepted appellant's case for lumbar strain. The Office further determined that appellant had not submitted sufficient evidence to establish that the claimed conditions of lumbar disc bulge, lumbar degenerative disc disease, cervical degenerative disc disease, cervical spondylosis, carpal tunnel syndrome, depression and tremors were caused by the employment injury of March 27, 2002. The Office also noted that it was clear that appellant had cervical and lumbar degenerative disease prior to the fall on March 27, 2002.

In another decision dated April 11, 2005, the Office denied appellant's claim for continuation of pay for the period March 28, 2002 to May 13, 2002.

LEGAL PRECEDENT

When an employee claims that he or she sustained an injury in the performance of duty, the employee must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The employee must also establish that such event, incident or exposure caused an injury. Once an employee establishes an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, which the employee claims compensation, is causally related to the accepted injury.³ To meet his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.⁴ Medical conclusions

² The provider's signature is illegible.

³ See *Leon Thomas*, 52 ECAB 202 (2001).

⁴ See *Gary J. Watling*, 52 ECAB 278 (2001).

unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.⁵

ANALYSIS

The Office accepted appellant's claim for lumbar strain on April 11, 2002. However, the Office determined that the medical evidence was insufficient to accept the conditions of lumbar disc bulge, lumbar degenerative disease, cervical degenerative disc disease, cervical spondylosis, carpal tunnel syndrome, depression and tremors, as none of the medical reports contained a rationalized medical opinion on the issue of whether these conditions were caused by the employment incident. The Office, on March 8, 2005, requested that appellant provided additional information concerning her preexisting conditions in order to determine whether the fall changed the natural progression of her preexisting conditions. The Board notes that the record reflects that appellant had a fall and whiplash secondary to a motor vehicle collision prior to her March 27, 2002 injury. Additionally, the records indicate that appellant was treated for chronic lumbosacral strain and residuals of rheumatic disease, spondylosis without spondylolisthesis, radiculopathy and the appearance of a bulging disc at L5-S1, as far back as April 30, 1999.

In support of her claim of lumbar disc bulge, lumbar degenerative disease, cervical degenerative disc disease, cervical spondylosis, carpal tunnel syndrome, depression and tremors, appellant submitted various reports and records. However, this evidence is insufficient to meet appellant's burden of proof.

In his July 19, 2002 reports, Dr. Ballenger noted that appellant fell on March 27, 2002 and hit the back of her head and thereafter had symptoms of tremulousness of the left arm and hand numbness in the right arm along with decreased range of motion of her neck, carpal tunnel syndrome, thyroid disease, tremors and anemia, as well as depression. He stated that appellant indicated that she did not have these symptoms prior to the fall. Dr. Ballenger did not clearly offer an opinion on causal relationship. To the extent that his report can be construed as supporting causal relationship, the Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to establish causal relation.⁶ Furthermore, the history reported by Dr. Ballenger appears to be incorrect, as the record indicates that appellant had symptoms and preexisting conditions prior to her fall, which included a prior fall in 1995 and a motor vehicle accident in 2001. Medical evidence predicated on unsubstantiated diagnoses or inaccurate factual or medical history is of diminished probative value.⁷

Dr. Ballenger's December 30, 2002 report tends to indicate that appellant's conditions were due to her automobile accident as he stated that he could not say that the "wreck per se caused these, but could certainly exacerbate any underlying problems she might have had...." He

⁵ *Albert C. Brown*, 52 ECAB 152 (2000).

⁶ *Kimper Lee*, 45 ECAB 565 (1994).

⁷ *See Billie C. Rae*, 43 ECAB 192 (1991).

also advised that he was uncertain as to the etiology of her tremors. In his August 6, 2004 report, Dr. Ballenger indicated that appellant had contacted him regarding her denied claim. He opined that he would “go ahead and say that the fall caused her problems.” The Board notes that Dr. Ballenger appeared to be repeating the conditions or contentions as requested by appellant without providing his own medical opinion regarding whether this or any other exposure caused his disability. His opinion on causal relationship between a claimant’s disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.⁸ Where a physician’s statements regarding a claimant’s ability to work consist primarily of a repetition of the claimant’s complaints, this is not a basis for payment of compensation.

Appellant also submitted several medical and diagnostic reports. However, these reports merely reported findings and did not contain an opinion regarding the cause of the reported condition. Appellant also submitted several disability slips, which placed her on light duty. However, none of these reports contained a diagnosis or opinion which contained an explanation regarding whether any of the aforementioned conditions were causally related to the accepted employment injury.⁹

The record also contains reports from nurses or nurse practitioners and physical therapists. Health care providers such as nurses, acupuncturists, physician’s assistants and physical therapists are not physicians under the Federal Employees’ Compensation Act. Thus, their opinions do not constitute medical evidence and have no weight or probative value.¹⁰ Lay individuals such as physician assistants, nurse practitioners and social workers are not competent to render a medical opinion.¹¹

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her lumbar disc bulge, lumbar degenerative disease, cervical degenerative disc disease, cervical spondylosis, carpal tunnel syndrome, depression and tremors are causally related to her accepted employment injuries.

⁸ *Thaddeus J. Spevack*, 53 ECAB 474 (2002). See also *Laurie S. Swanson*, 53 ECAB 517 (2002) (where a physician’s statements regarding a claimant’s ability to work consist primarily of a repetition of the claimant’s complaints, this is not a basis for payment of compensation).

⁹ *Michael Smith* 50 ECAB 313 (1999).

¹⁰ See *Jan A. White*, 34 ECAB 515, 518 (1983). See 5 U.S.C. § 8101(2). This subsection defines the term “physician.” See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

¹¹ *Janet L. Terry*, 53 ECAB 570 (2002).

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board