



particularly ankle.”<sup>1</sup> On December 17, 2007 Dr. Kenneth Rauschenbach, an attending osteopath and Board-certified orthopedic surgeon, performed open reduction internal fixation surgery on appellant’s left ankle. The procedure was authorized by the Office. Appellant received compensation from the Office for periods of disability.

On February 21, 2008 Dr. Rauschenbach indicated that appellant’s left ankle was well on its way to healing and noted that the ankle only showed minimal tenderness on palpation. He stated that she should start weight-bearing activities as tolerated with physical therapy. On February 21, 2008 appellant began participating in physical therapy sessions several times per week which focused on her left ankle. On March 20, 2008 Dr. Rauschenbach indicated that she complained of achy pain, numbness and tingling in her left leg. He indicated that appellant could perform light-duty work with no weight bearing, climbing or continuous standing or walking. Appellant returned to light-duty work for the employing establishment in mid April 2008. On April 22, 2008 Dr. Louis Cappa, an attending podiatrist, indicated that she reported minimal pain in her left ankle.

Appellant stopped work in late April 2008 and in May 2008 she claimed that she sustained a TMJ disorder and cervical and low back injuries due to her December 6, 2007 fall. She claimed that she did not initially feel pain related to these conditions because she had been on strong medication. Appellant asserted that the conditions caused her to be totally disabled from work.

In an April 9, 2008 report, Dr. Michael Cho, an attending Board-certified neurosurgeon, indicated that appellant reported that she had a fall at work on December 6, 2007 and that she had recently developed severe low back pain. He indicated that on examination she did not exhibit low back tenderness. Dr. Cho diagnosed “most probable lumbosacral strain.” On May 27, 2008 Dr. Rauschenbach indicated that appellant asked him for documentation of a back injury. He explained to her that they had never discussed a work-related back injury and that he had only treated her left ankle.<sup>2</sup>

On May 9, 2008 Dr. George Freud, an attending dentist, indicated that appellant reported TMJ pain, tenderness and clicking which represented “classic TMJ symptoms.” He stated, “These symptoms may be related to the fall she had at work in December 2007. Appellant may have hit her head when she fell down the steps.”

On June 26, 2008 Dr. Donald Magidson, an attending dentist, indicated that appellant reported that on December 6, 2007 she slipped and fell down a flight of wet metal steps at work. Appellant claimed that she was unconscious with no memory of the fall and that she was heavily medicated for over five months during which time she could feel no pain. She reported that she was bedridden for most of that time and had no previous history of cranial, facial, cervical or

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<sup>1</sup> A treatment note from the date of injury indicated that appellant reported left ankle pain and tenderness. No mention is made of symptoms in any other body part.

<sup>2</sup> In disability certificates, attending physicians indicated that appellant was disabled from April 22 to May 3 and May 12 to 26, 2008. Appellant continued to perform light-duty work for the employing establishment with occasional brief work stoppages.

TMJ trauma or pain. Dr. Magidson stated that “acute trauma” had apparently caused TMJ disorder, myofascial pain dysfunction disorder and possible misaligned and/or herniated cervical vertebrae.

On July 22, 2008 the Office requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted a June 9, 2008 report of Dr. Adam C. Carter, an attending Board-certified physical medicine and rehabilitation physician, who stated that she reported that she fell down a stairwell at work on December 6, 2007 and sustained injuries to her lower back, left ankle and TMJ. She reported that she could not remember if she lost consciousness but she believed that she did. Dr. Carter diagnosed left ankle fracture by history, traumatic cervical spine pain syndrome, traumatic lumbar spine pain syndrome and traumatic TMJ injury. He indicated that appellant was disabled and stated, “If the [appellant’s] history is true, the present signs and symptoms are causally related to the above referenced accident.”

In an August 14, 2008 report, Dr. Magidson indicated that appellant reported the same medical history that she provided on June 26, 2008. He again indicated that “acute trauma” had apparently caused TMJ disorder, myofascial pain dysfunction disorder and possible misaligned and/or herniated cervical vertebrae.

In an August 27, 2008 decision, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a TMJ, cervical or low back condition due to her December 6, 2007 employment injury.

In an undated letter received by the Office on February 19, 2009, appellant requested reconsideration of her claim. Appellant stated that she was focusing her reconsideration request on the claimed TMJ condition. She indicated that she was submitting a report of Dr. Eugene M. Levine, an attending dentist, which she believed would establish her claim. Appellant felt that one of the reasons the Office denied her claim was that she did not list the jaw injury on the original claim form. She asserted that after she fell on December 6, 2007 her left ankle caused such severe pain that other pain was blocked out. Appellant stated, “During the healing, 5-6 months, I was bedridden; I was taking Percocet and was in and out of consciousness. I felt no pain anywhere.” She claimed that when she returned to work in Spring 2008 she had to stop taking Percocet and the pain from the TMJ condition surfaced.

In a January 19, 2009 report, Dr. Levine indicated that appellant reported that on December 6, 2007 she fell down a wet flight of stairs at work and broke her left ankle. Appellant asserted that she was unconscious after the fall and claimed that in April 2008 when she stopped taking a strong pain medication for the ankle she noticed discomfort in her jaw. Dr. Levine stated, “Based on the history of the accident, the symptoms of TMJ are related to the accident on December 6, 2007. [Appellant] reported that she was unconscious after the accident which indicates that she struck her head during the fall.” She also submitted several reports in which Dr. Magidson continued to indicate that she had TMJ disorder.

In an April 20, 2009 decision, the Office affirmed its August 27, 2008 decision indicating that the additional evidence submitted by appellant did not establish her claim.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of 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 timely filed within the applicable time limitation period 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.<sup>4</sup> The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. 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 compensable 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.<sup>5</sup> A medical opinion is of limited probative value if it contains an opinion on causal relationship which is equivocal or speculative in nature.<sup>6</sup>

## ANALYSIS

The Office accepted that appellant sustained a closed fracture of her left ankle due to a fall at work on December 6, 2007. In May 2008, appellant claimed that she sustained a TMJ disorder and cervical and low back injuries due to her December 6, 2007 fall.<sup>7</sup> The Board finds that she did not meet her burden of proof to establish that she sustained a TMJ, cervical or low back condition due to her December 6, 2007 employment injury.

In June 26 and August 14, 2008 reports, Dr. Magidson, an attending dentist, indicated that appellant reported that she became unconscious due to her December 6, 2007 fall and that she was heavily medicated for over five months during which time she could feel no pain. Appellant reported that she was bedridden for most of that five-month period. Dr. Magidson stated that "acute trauma" had apparently caused TMJ disorder, myofascial pain dysfunction disorder and possible misaligned and/or herniated cervical vertebrae. In a June 9, 2008 report, Dr. Carter, an attending Board-certified physical medicine and rehabilitation physician, stated that appellant reported that she fell down a stairwell at work on December 6, 2007 and sustained injuries to her lower back, left ankle and TMJ. Appellant stated that she could not remember if she lost consciousness but she believed that she did. Dr. Carter diagnosed left ankle fracture by

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>6</sup> *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956).

<sup>7</sup> Appellant also claimed that she sustained disability due to these conditions for various periods beginning in late April 2008.

history, traumatic cervical spine pain syndrome, traumatic lumbar spine pain syndrome and traumatic TMJ injury. He indicated that appellant was disabled and stated, "If [appellant's] history is true, the present signs and symptoms are causally related to the above referenced accident."

The Board finds that the reports of Dr. Magidson and Dr. Carter would not establish appellant's claim that she sustained TMJ, cervical and back injuries due to her December 6, 2007 fall at work as they do not constitute rationalized medical evidence establishing such a causal relationship. First, neither physician provides a clear opinion on causal relationship and their opinions in this regard must be considered to be speculative or equivocal. Second, the reports are not based on a complete and accurate factual and medical history. Neither physician made any mention of the fact that appellant primarily complained of left ankle symptoms in the months following her December 6, 2007 fall or that she only mentioned jaw, neck or back pain about five months after her fall. There is no indication in the contemporaneous medical reports that appellant hit her head or became unconscious due to her December 6, 2007 fall. Appellant claimed that she was mostly bedridden during the five months after her fall and that she took such extensive pain medications on a continuous basis during this period that she did not realize that she had jaw, neck or back pain until Spring 2008 when she stopped taking the medication. Dr. Magidson and Dr. Carter appear to have based their opinions, at least in part, on her version of her factual and medical history. The Board notes, however, that the record does not support appellant's assertions regarding her history. Appellant was actively participating in physical therapy activities several times a week by February 2008 and there is no evidence that she took medications to the extent she claimed.

Appellant also submitted a January 19, 2009 report in which Dr. Levine, an attending dentist, indicated that she reported that on December 6, 2007 she fell down a wet flight of stairs at work and broke her left ankle. She told Dr. Levine that she was unconscious after the fall and claimed that in April 2008 when she stopped taking a strong pain medication for the ankle she first noticed discomfort in her jaw. Dr. Levine stated, "Based on the history of the accident, the symptoms of TMJ are related to the accident on December 6, 2007. [Appellant] reported that she was unconscious after the accident which indicates that she struck her head during the fall." The Board notes that Dr. Levine appears to have based his opinion on causal relationship on appellant's faulty version of her factual and medical history. Therefore, Dr. Levine's opinion is not based on a complete and accurate factual history and is of limited probative value on the relevant issue of the present case. He did not attempt to explain his opinion in light of the fact that there is no contemporaneous evidence that appellant hit her head on December 6, 2007 and that she did not report jaw symptoms until five months after the fall.<sup>8</sup>

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<sup>8</sup> In disability certificates, attending physicians indicated that appellant was disabled from April 22 to May 3 and May 12 to 26, 2008. However, the physicians did not identify the cause of this disability. In an April 9, 2008 report, Dr. Cho, an attending Board-certified neurosurgeon, indicated that appellant reported that she had a fall at work on December 6, 2007 and that she had recently developed severe low back pain. He indicated that on examination she did not exhibit low back tenderness and diagnosed "most probable lumbosacral strain." Dr. Cho's report is of limited probative value as he did not provide a clear, rationalized opinion that appellant's back problems were related to the December 6, 2007 fall.

For these reasons, appellant did not show that she sustained a TMJ, cervical or low back condition due to her December 6, 2007 employment injury. Therefore, she has not shown that she sustained any disability due to these conditions.<sup>9</sup>

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a TMJ, cervical or low back condition due to her December 6, 2007 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 20, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 2, 2010  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>9</sup> Appellant claimed total disability for periods beginning in late April 2004.