

On June 20, 2007 appellant, then a 44-year-old window clerk, filed a traumatic injury claim (Form CA-1) alleging that she injured her back on June 14, 2007 in the performance of duty. She stated that she bent over to place an item in a folder and, when she straightened up, she felt back pain. The reverse of the claim form indicated that appellant stopped working on June 15, 2007.

In a report dated June 15, 2007, Dr. Joseph Walters, an internist, reported that appellant sustained a recurrence of severe back pain on June 14, 2007 and had an exacerbation of her lumbar herniation/radiculopathy. In a June 17, 2007 report, he stated that she sustained severe back pain when she squatted to file papers on June 14, 2007. Dr. Walters indicated that appellant had lumbar disc herniations from an injury 1.5 years ago and cervical disc herniations and right shoulder impingement syndrome from a motor vehicle accident one year ago.

In a report dated July 11, 2007, Dr. Michael Palmeri, an orthopedic surgeon, provided a history that appellant suffered a low back injury at work on June 14, 2007. He stated that she bent down to file a letter and could not stand up, receiving hospital treatment on that date for back spasms. Dr. Palmeri provided results on examination and diagnosed “a lumbosacral strain with evidence of sciatica after a work-related accident.” By report dated July 31, 2007, he provided results on examination and indicated that appellant had a continuing lumbosacral strain with evidence of sciatica after a work accident.

By decision dated August 23, 2007, the Office denied the claim for compensation. It found that the medical evidence was not rationalized evidence and that appellant had injuries in a motor vehicle accident.

Appellant requested reconsideration by letter dated May 20, 2008 and submitted additional evidence. In a report dated August 29, 2007, Dr. Palmeri stated that the injuries from the motor vehicle accident were to the neck and right shoulder, not the lower back. He noted that appellant did have a prior injury to her lower back after a work-related accident on October 15, 2005 but the June 14, 2007 injury “should be dealt with as a new injury because a patient can sustain a problem when they bend over at work.” In a report dated October 31, 2007, Dr. Palmeri noted a worsening lumbosacral strain with evidence of sciatica and, in a January 9, 2008 report, he diagnosed a continuing thoracolumbar strain with radiculopathy after a work-related accident.

By decision dated August 18, 2008, the Office reviewed the case on its merits and denied modification. It indicated that it could not prepare a statement of accepted facts without evidence regarding the motor vehicle accident.

On August 4, 2009 appellant requested reconsideration and submitted evidence from Dr. Palmeri of treatment from July 27, 2006. In a decision dated October 30, 2009, the Office denied modification. It referred to a June 12, 2007 report from Dr. Palmeri, which according to the Office reported that appellant had a continuing lumbosacral strain from the 2005 injury.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides for the payment of compensation for “the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”¹ The phrase “sustained while in the performance of duty” in the Act is regarded as the equivalent of the commonly found requisite in workers’ compensation law of

¹ 5 U.S.C. § 8102(a).

“arising out of an in the course of employment.”² An employee seeking benefits under the Act has the burden of establishing that he or she sustained an injury while in the performance of duty.³ 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. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁴

The Office’s procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.⁵ In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician’s affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.⁶

Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁷

ANALYSIS

In the present case, the Office accepted that appellant bent over to place an item in a folder on June 14, 2007. The issue is whether the medical evidence is sufficient to establish an injury causally related to the employment incident. Dr. Walters stated in his June 17, 2007 report that appellant squatted to file papers and had back pain. He diagnosed exacerbation of lumbar herniation/radiculopathy, without providing a rationalized medical opinion on causal relationship between the diagnosis and the June 14, 2007 employment incident.

² *Valerie C. Boward*, 50 ECAB 126 (1998).

³ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁴ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

⁶ *Id.*

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

In his July 11, 2007 report, Dr. Palmeri provided a history of appellant bending over to file a letter. He diagnosed a lumbosacral strain with evidence of sciatica after a work accident. Dr. Palmeri did not provide a rationalized medical opinion on causal relationship, explaining how the incident caused the diagnosed condition. In the August 29, 2007 report, he stated generally that an employee can sustain a problem when they bend over, without providing further explanation. Medical opinions that are speculative and not supported by medical rationale are generally entitled to little probative value and are insufficient to meet appellant's burden of proof.⁸

The Board accordingly finds that the medical evidence of record is not sufficient to establish the claim. In the absence of a rationalized medical opinion, based on a complete background, appellant did not meet his burden of proof in this case.

On appeal, appellant argues that the reconsideration requests established that she sustained a disabling injury causally related to the June 14, 2007 employment incident. For the reasons noted above, the Board finds that the medical evidence of record was not of sufficient probative value to establish the claim.

CONCLUSION

The Board finds that appellant has not established a back injury in the performance of duty on June 14, 2007.

⁸ *Carolyn F. Allen*, 47 ECAB 240 (1995).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 30, 2009 is affirmed.

Issued: January 24, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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