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<b>V.L., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 12-1048</b>
	)	<b>Issued: December 17, 2012</b>
<b>DEPARTMENT OF JUSTICE, FEDERAL</b>	)	
<b>BUREAU OF PRISONS, Fort Dix, NJ, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

On April 19, 2012 appellant filed a timely appeal from April 9 and May 17, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether the medical conditions for which appellant claims compensation are causally related to the June 14, 2000 work injury; and (2) whether appellant's disability for work beginning April 1, 2011 was causally related to the accepted employment injuries.

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On June 14, 2000 appellant, a 33-year-old accounting technician, sustained a traumatic injury in the performance of duty when a truck rear-ended her car. OWCP accepted her claim for multiple sprains and lumbar radiculopathy. It also accepted appellant's claim for right hip synovitis, bilateral knee contusion, postconcussion syndrome, abdominal and pelvic pain, trapezius myofascitis, right shoulder bursitis, right knee joint effusion and anterior chest wall bruising. Appellant underwent an authorized right shoulder arthroscopy in 2002. She received schedule awards for a 14 percent impairment of her left lower extremity, a 51 percent impairment of her right lower extremity and a 16 percent impairment of her right upper extremity.

Appellant stopped work on the date of injury and elected retirement benefits in 2006.

In 2011 appellant asked OWCP to expand its acceptance of her claim to include arthritis all over her body. To get her bills paid, she asked OWCP to update her file with diagnosis codes for plantar fascial fibromatosis, pain in joint involving ankle and foot, unspecified osteoarthritis, pain in joint involving multiple sites, lower leg joint pain, unspecified backache and unspecified myalgia and myositis.

In June 2011 Dr. Stephen L. Burnstein, the attending osteopath practicing in rheumatology, reviewed his treatment of appellant since 2007 and his examination of her in April 2011. Appellant complained of widespread pain. She had general myospasm in the cervical, thoracic and lumbosacral regions but no focal musculoskeletal neurologic signs. Appellant had decreased significantly painful right shoulder motion. The left knee was tender with evidence of chondromalacia.

Dr. Burnstein related the history of the employment injury. He noted that musculoskeletal complaints developed over the next several days and persisted through the years. Dr. Burnstein reviewed what medical records were available. It was his opinion, within a reasonable degree of medical certainty, that the majority of appellant's musculoskeletal conditions were engendered or aggravated, accelerated and exacerbated by the June 2000 motor vehicle accident. These consisted of fibromyalgia syndrome with subsequent cognitive dysfunction and widespread pain, status postconcussion syndrome, degenerative knee arthritis with chondromalacia, degenerative arthritis of the hips, right greater than left and shoulders. "The latter arthritic conditions were, in my opinion, and again within a degree of reasonable degree of medical certainty, preexistent to her work injury in 2000, but were aggravated, exacerbated and accelerated by that work injury on that date."

On the issue of disability for work, Dr. Bernstein found that appellant was unable to perform as a teacher in any school system particularly because of her musculoskeletal and cognitive difficulties.<sup>2</sup> He completed a work capacity evaluation indicating that she was unable to work eight hours a day with restrictions.

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<sup>2</sup> Appellant worked as a substitute teacher from September 2008 through November 2011.

Dr. Burnstein later reiterated that arthritic conditions preexisting appellant's motor vehicle accident were exacerbated, aggravated and accelerated by that accident. These conditions included osteoarthritis, particularly related to the knees and hips and shoulder, as well as chondromalacia patellae. Further, Dr. Burnstein found that appellant had fibromyalgia syndrome and its associated co-morbidities as a result of the June 2000 motor vehicle accident.

In an April 9, 2012 decision, OWCP denied appellant's claim for additional medical conditions. It explained that, although Dr. Burnstein diagnosed multiple conditions, he did not explain, based on an accurate factual and medical history, how the June 2000 motor vehicle accident caused or affected appellant's condition, citing objective findings to support his opinion. OWCP added that pain was a symptom and not a diagnosis.

Appellant also claimed compensation for wage loss from April 1, 2011 to January 13, 2012. OWCP advised her that Dr. Burnstein had not provided a thorough rationale, based on objective findings, as to how her work-related conditions had worsened such that she was no longer able to perform the duties of her June 14, 2000 position. It gave appellant 30 days to provide sufficient evidence that the disability she claimed was related to the June 14, 2000 work injury. No additional evidence was received.

In a May 17, 2012 decision, OWCP denied appellant's claim for wage loss.

On appeal, appellant argues that OWCP should have accepted conditions dating back to the original date of injury. She notes that Dr. Burnstein reviewed all the records and requested that OWCP update the conditions based on those records and his current examination. These conditions were nothing new, appellant states.

As for her disability claim, appellant notes that she was disqualified from working as an accounting technician seven years ago and that Dr. Burnstein disqualified her from working in her current profession as a substitute teacher.

### **LEGAL PRECEDENT -- ISSUE 1**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she 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. He or she must also establish that such event, incident or exposure caused an injury.<sup>4</sup>

Causal relationship is a medical issue,<sup>5</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

physician must be based on a complete factual and medical background of the claimant,<sup>6</sup> must be one of reasonable medical certainty,<sup>7</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and the established incident or factor of employment.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

OWCP accepted that appellant sustained an injury in the performance of duty on June 14, 2000. In doing so, it accepted that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. OWCP also accepted that the incident caused an injury. It accepted appellant's claim for a number of medical conditions.

Appellant now asks OWCP to accept additional medical conditions. She therefore has the burden of proof to establish that these additional medical conditions are causally related to the June 2000 employment-related motor vehicle accident. As part of this burden, appellant must submit a medical opinion supported by medical rationale explaining the nature of the relationship between the diagnosed conditions and the accident.

Dr. Burnstein, the attending osteopath, provided an unequivocal opinion that the majority of appellant's current musculoskeletal conditions, including arthritis, were either precipitated or aggravated by the motor vehicle accident. His opinion thus supports her claim. Dr. Burnstein did not explain, however, how he arrived at his conclusion. Sound medical reasoning is critical to establishing the element of causal relationship and he offered no reasoning at all. Dr. Burnstein reviewed some medical records but did not discuss how those records supported his conclusion. As a result, the Board is unable to determine whether he attributed the additional medical conditions to the June 2000 motor vehicle accident on purely temporal grounds, because appellant herself believed there was some connection, or for some other reason.

Dr. Burnstein made clear that he believed the June 2000 motor vehicle accident aggravated, exacerbated and accelerated appellant's preexisting arthritic conditions, but he did not point to objective findings or diagnostic tests demonstrating this aggravation, exacerbation or acceleration. He did not show how her current arthritic condition was anything other than the natural progression of her preexisting condition. Dr. Burnstein's conclusion might be correct. He did not give OWCP sufficient medical grounds to find that his conclusion was rational, sound and logical.<sup>9</sup> Dr. Burnstein did not show that his opinion amounted to more than speculation.

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<sup>6</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>7</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>8</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>9</sup> It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical. *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein.

Medical conclusions unsupported by rationale are of little probative value.<sup>10</sup> As Dr. Burnstein did not support his opinion with sound medical reasoning, the Board finds that appellant has not met her burden to establish that the additional medical conditions for which she seeks compensation are causally related to her June 2000 motor vehicle accident. The Board will therefore affirm OWCP's April 9, 2012 decision.

Appellant argues that OWCP should have accepted conditions dating back to the original date of injury. OWCP did accept her claim for multiple sprains and then for lumbar radiculopathy. It later expanded its acceptance to include a number of additional medical conditions, including right hip synovitis, bilateral knee contusion, postconcussion syndrome, abdominal and pelvic pain, trapezius myofascitis, right shoulder bursitis, right knee joint effusion and anterior chest wall bruising. OWCP also approved right shoulder surgery. To the extent that appellant now wants it to pay for more diagnosed medical conditions, she has the burden of establishing the element of causal relationship, which is a medical issue. As the Board has explained, Dr. Burnstein's opinion, while supportive, is not sufficient to establish causal relationship.

### **LEGAL PRECEDENT -- ISSUE 2**

As noted earlier, FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>11</sup> "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.<sup>12</sup>

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of her claim by the weight of the evidence,<sup>13</sup> including that she sustained an injury in the performance of duty and that any specific disability for work for which she claims compensation is causally related to that employment injury.<sup>14</sup>

It is not sufficient for the claimant to establish merely that she has disability for work. She must establish that her disability is causally related to the accepted employment injury. FECA provides compensation only for as long as there exists a proven physical or related impairment attributable to the injury. The claimant must submit a rationalized medical opinion that supports a causal connection between her current disabling condition and the employment injury. The medical opinion must be based on a complete factual and medical background with

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<sup>10</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

<sup>11</sup> 5 U.S.C. § 8102(a).

<sup>12</sup> 20 C.F.R. § 10.5(f).

<sup>13</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>14</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

an accurate history of the employment injury and must explain from a medical perspective how the current disabling condition is related to the injury.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

Appellant claimed compensation for wage loss from April 1, 2011 to January 13, 2012. She therefore has the burden to establish that the claimed disability for work was causally related to the June 2000 motor vehicle accident. To be clear, the issue is not whether appellant was disabled for work as a substitute teacher beginning April 1, 2011. Indeed, it appears that she continued to work as a substitute teacher through November 2011, notwithstanding Dr. Burnstein's June 2011 finding that she was unable to perform as a teacher in any school system particularly because of her musculoskeletal and cognitive difficulties. The issue is whether the accepted medical conditions prevented appellant from performing the duties of her position as an accounting technician during the period claimed.

Dr. Burnstein did not address this issue directly. He did complete a work capacity evaluation indicating that appellant was unable to work eight hours a day with restrictions. The restrictions are such as to raise a question of whether she could return to work as an accounting technician.

There are two problems. First, as the Board just noted, appellant continued to work in her current profession as a substitute teacher notwithstanding Dr. Burnstein's work capacity evaluation, which diminishes the probative value of that evaluation. Second, Dr. Burnstein did not attribute any disability for work specifically to the accepted medical conditions. He attributed a number of additional medical conditions to the accident, but those medical conditions are not established to be compensable, and any disability arising from those additional medical conditions is likewise not compensable.

The Board will therefore affirm OWCP's May 17, 2012 decision.

Appellant argues on appeal that she was medically disabled as an accounting technician over seven years ago. But the record shows that she returned to work from 2008 to 2011 as a substitute teacher, which tends to show that her June 2000 motor vehicle accident was no longer totally disabling. Whether the accident totally disabled appellant for work as an accounting technician in 2011 is the question raised by her claim for wage-loss benefits, and a question that must be answered by a well-reasoned medical opinion. In both of the issues on appeal, the obstacle to receiving additional compensation benefits can be cleared with a sound medical explanation directly addressing the specific issues of causal relationship.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that the medical conditions and disability for which she claims compensation are causally related to the June 14, 2000 work incident.

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<sup>15</sup> John A. Ceresoli, Sr., 40 ECAB 305 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 17 and April 9, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 17, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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