United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 12-144**
	)	**Issued: May 17, 2012**
DEPARTMENT OF THE ARMY, Monterey, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 28, 2011 appellant, through her attorney, filed a timely appeal from a June 1, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 an injury causally related to the accepted July 23, 2010 employment incident.

FACTUAL HISTORY

On September 1, 2010 appellant, then a 46-year-old assistant professor, filed a traumatic injury claim, alleging that she sustained back injury on July 23, 2010 while moving her office from the third floor to the first floor. She claimed that lifting boxes and binders, as well as moving her desk caused injury in her back, hip and right leg, with radiation of pain into her right leg.

[1] 5 U.S.C. § 8101 *et seq.*

On September 8, 2010 OWCP requested that appellant submit additional evidence including a medical report containing a diagnosis of her condition and medical rationale in support of that diagnosis.

Dr. Michelle Krueger-Kalinski, a Board-certified physician in emergency medicine, stated in an August 26, 2010 report that appellant had to carry numerous items up and down the stairs about seven times on July 23, 2010 and that appellant started having back pain immediately thereafter. She also noted that appellant's MRI scan revealed an "L4-5 broad-based dis[c] bulging with annular fissure in the left foraminal region as well as facet arthropathy and a small osteophyte causing mild narrowing of the spinal canal -- both neural foramina." Dr. Krueger-Kalinski diagnosed severe intractable right lower extremity radiculopathy secondary to L4-5 disease. On a form report she checked "yes" to the question: "Are your findings and diagnosis consistent with patient's account of injury or onset of illness?"

A physical therapist reported on August 30, 2010 stated that appellant was being treated for lumbar pain with right sciatica consistent with L5 nerve compression and possible disc bulge at L5-S1.

In an October 5, 2010 report, Dr. Linda Smith, a family practitioner, diagnosed appellant with low back pain and answered "yes" to the question of whether appellant's injury was work related. She also referred appellant to Dr. Dragan Dimitrov, a Board-certified neurosurgeon.

On October 14, 2010 OWCP received a magnetic resonance imaging (MRI) scan report dated August 24, 2010 from Dr. Danied Braslau, a Board-certified diagnostic radiologist, who diagnosed lower lumber spondylosis.

By decision dated October 18, 2010, OWCP accepted the incident but denied appellant's claim on the grounds that she had failed to establish that she sustained an injury causally related to her accepted work incident.

Appellant submitted a request for hearing before the Branch of Hearings and Review on November 10, 2010.

Dr. Dimitrov reported on February 24, 2011 that appellant alleged that pain in her right hip and lower back began on July 23, 2010 after moving her desk. He diagnosed her with degenerative changes of the lumbar spine at L4-5 with moderate lateral recess stenosis and disc protrusion. Dr. Dimitrov indicated that "it is clear that [appellant's] right leg symptoms began at the time of the incident in her office," but that "it is difficult to tell whether her symptoms are related to a lumbar strain or due to the lumbar spondylosis and dis[c] protrusion."

In an April 26, 2011 report, Dr. Dimitrov diagnosed appellant with lumbar stenosis of the lateral recess which has a degenerative pattern. He also stated that she "does have a disc bulge which could be post-traumatic and related to her work-related injury." Dr. Dimitrov noted that it is plausible that the desk lifting incident aggravated the preexisting degenerative stenosis, and caused a disc bulge which led to her current constellation of symptoms, but there is no way to be absolutely certain. He further stated that, because appellant had no clear nerve root signs, or radiculopathy, it was equally plausible, that her symptoms are caused by a muscular or tendon strain as a result of the desk lifting incident.

On June 1, 2011 OWCP's hearing representative affirmed the denial of appellant's claim on the grounds that the medical evidence was not sufficient to establish that a medical condition was causally related to the work event.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[3] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[4] As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[5] 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.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee'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 employee, 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 employee.[7] In addition, the Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.[8]

ANALYSIS

Appellant has alleged that she sustained back, hip and right leg injuries as a result of lifting and moving heavy boxes, binders and her desk during an office move on July 23, 2010. The Board finds that she has submitted insufficient medical evidence to establish that her alleged medical conditions were causally related to her accepted work event.

Appellant has submitted medical reports which provide several diagnoses of her low back condition.

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[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *G.T.*, *id*. *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[6] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *See Albert C. Brown*, 52 ECAB 152 (2000).

Causal relationship between appellant's diagnosed back condition and her workplace injury must be established by a physician's rationalized medical opinion. Dr. Krueger-Kalinski's August 26, 2010 medical report noted appellant's workplace incident, and also provided a diagnosis for appellant's condition, severe intractable right lower extremity radiculopathy, secondary to L4-5 disc disease. However, the report did not contain a rationalized medical opinion establishing the requisite causal link. Dr. Krueger-Kalinski answered "yes" to indicate that appellant's findings and diagnosis were consistent with her account of injury or onset of illness. However, she did not discuss whether appellant's condition was degenerative in nature, and she did not discuss how appellant's activities during the move on July 23, 2010 caused the condition he diagnosed approximately one month later. The Board has held that an opinion on causal relationship, which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history, is of diminished probative value.[9] As such, this report is of limited probative value.

On August 24, 2010 Dr. Braslau diagnosed lower lumbar spondylosis, on the basis of appellant's MRI scan examination, but he offered no opinion regarding the cause of appellant's condition.

A physical therapist reported on August 30, 2010 that appellant was being treated for lower back pain with right sciatica consistent with L5 nerve compression and possible L5-S1 herniated disc. Section 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. As nurses, physician's assistants, physical and occupational therapists are not "physicians" as defined by FECA, their opinions regarding diagnosis and causal relationship are of no probative medical value.[10]

Dr. Smith's October 5, 2010 report also lacks probative value as it does not provide a rationalized medical explanation of causal relationship between a diagnosed condition and the accepted work event. She also checked a box "yes" indicating that appellant's low back pain was work related, but she offered no other opinion regarding appellant's diagnosis or causal relationship.

Dr. Dimitrov's February 24 and April 26, 2011 medical reports did not provide a definitive diagnosis of appellant's condition or definitive opinion regarding the cause of her condition. He opined that she had a disc bulge which "could be" post-traumatic and related to her work incident, but he also stated that it was plausible that the desk lifting incident aggravated preexisting degenerative stenosis and caused a disc bulge. But then Dr. Dimitrov noted that since appellant had no clear-cut nerve root "signs" or radiculopathy, it was equally plausible that appellant's symptoms were caused by a muscle or tendon strain. His reports are speculative in nature and do not establish a clear diagnosis based upon objective medical findings. Moreover neither report provided medical rationale explaining how appellant's back conditions were caused by her specific move-related activities on July 23, 2010. Dr. Dimitrov merely concluded that "desk-lifting" could have aggravated her condition. As noted above, a physician's opinion on causal relationship must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific compensable employment factors.

[9] *Lucrecia, M. Nelson*, 42 ECAB 583, 594 (1991).

[10] *See Roy L. Humphrey*, 57 ECAB 238 (2005).

The Board has held that medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.[11]

In the absence of rationalized medical opinion evidence, appellant failed to meet her burden.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury as a result of her employment activities on July 23, 2010.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 1, 2011 is affirmed.

Issued: May 17, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[11] *A.C.*, Docket No. 11-1800 (issued March 21, 2012); *William C. Thomas*, 45 ECAB 591 (1994).