

**United States Department of Labor
Employees' Compensation Appeals Board**

E.B., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Columbia, SC, Employer**

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**Docket No. 09-1055
Issued: December 14, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On February 25, 2009 appellant filed a timely appeal of a February 23, 2009 decision of the Office of Workers' Compensation Programs denying modification of a decision denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On August 24, 2006 appellant, then a 49-year-old nurse, filed an occupational disease claim alleging that she developed lumbar and cervical subluxation and left thigh numbness from a chair at her workstation that caused her to bend repetitively over her keyboard. She first

realized that her condition was caused by her employment activities on May 1, 2006. Appellant did not stop work. The employing establishment controverted the claim.

On September 18, 2006 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence. In an August 14, 2006 statement, appellant described her work duties and noted that they required sitting in a chair with a slant causing her to lean over a keyboard. She indicated that three years prior she began experiencing low back pain with a tingling numbness sensation on her left thigh that increased with standing and walking. Appellant noted that nine months prior she began to experience neck pain and stiffness. She self-treated her condition for two years and began treatment with a physician in June 2006. Appellant noted that she had no prior back or neck problems. In an October 14, 2006 statement, she asserted that her job requirements caused her neck and back problems. Appellant reiterated that her job duties required sitting in a slanted chair causing her to lean inward and strain her spine. She summarized the history of injury and noted that she had no major acute or chronic back or orthopedic injuries. Appellant also noted that within the last four years she was diagnosed with osteopenia.

On August 22, 2006 Dr. John Bracey, a chiropractor, noted treating appellant on June 19, 2006 for complaints of low back pain with numbness and burning sensation through her left thigh to her knee. He stated that these symptoms had persisted for two years. Dr. Bracey opined that the etiology of appellant's condition was unclear but that she believed that her chair at work caused her problems. He indicated that her job duties required sitting for long hours at a call center. In a June 19, 2006 x-ray report of appellant's lumbar and cervical spine, Dr. Bracey found moderate degenerative disc disease of L5-S1, early degenerative disc disease of the cervical spine and evidence of areas of segmental dysfunction. In treatment notes dated between June 19 and August 15, 2006, Dr. Bracey noted appellant's complaint of left thigh burning and tingling and low back pain. He reiterated that the causative factor was unknown but may have been aggravated by a work chair.

In a November 21, 2006 decision, the Office denied appellant's claim finding that the medical evidence did not provide a medical diagnosis connected to the claimed employment factors.

On November 19, 2007 appellant requested reconsideration. In an undated statement, she indicated that she had been seen by several physicians with lumbar computerized tomography (CT) and magnetic resonance imaging (MRI) scan results that support her claim. Appellant reiterated that her job required sitting for prolonged periods with nonergonomically structured chairs and repetitive reaching over a keyboard causing wear and tear on her lumbar spine. She noted constant low back pain and left thigh numbness caused by lumbar disc degeneration with herniated and bulging disc based on diagnostic test results. Appellant also noted that she was submitting medical documentation.

In a November 15, 2007 report, Dr. M. Craig Ward, Board-certified in family medicine, noted reviewing appellant's MRI scan and medical records. He opined that her back pain was caused by the physical demands of her job. Dr. Ward noted that he had patients with similar acute and chronic back pain with similar jobs. He also opined that people who performed low impact repetitive activities using nonergonomically designed facilities were clearly at risk to

suffer degenerative conditions similar to appellant's back problems. Dr. Ward noted that appellant was a victim of injury suffered on the job and in the workplace.

In a January 17, 2008 decision, the Office denied modification of its November 21, 2006 decision finding that the medical evidence did not establish that a diagnosed condition was causally related to appellant's employment factors.

On February 9, 2008 appellant requested reconsideration. She also submitted a February 5, 2008 report from Dr. Ward who clarified his previous diagnosis of back pain to chronic lumbago. Dr. Ward indicated that his new diagnosis was supported by medical records and symptoms that included tingling in the thigh, low back pain and the inability to lean forward without pain. He opined that repetitive activities using nonergonomically designed equipment were causal factors. Dr. Ward further opined that appellant's constant need to lean forward over her keyboard and the lack of corrective action to provide her with an ergonomically-appropriate chair result in chronic lumbago. Appellant subsequently submitted several statements dated July 17, 2008 and February 5, 2009 requesting a decision on her reconsideration request.

In a February 23, 2009 decision, the Office denied modification of its January 17, 2008 decision. It found that the medical evidence did not provide a firm diagnosis connected to identify employment factors as lumbago was another way of diagnosing pain.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or 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 filed within the applicable time limitation; that an injury was sustained while 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.¹

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.²

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

¹ *J.E.*, 59 ECAB ___ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

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.³

ANALYSIS

The record reflects that appellant's job as a nurse requires prolonged sitting and repetitive leaning over a keyboard. The Office accepted that the employment events occurred as alleged. However, appellant submitted insufficient medical evidence to establish that she has a diagnosed back condition causally related to her employment activities.

Dr. Ward's February 5, 2008 report diagnosed chronic lumbago based on appellant's symptoms including tingling in her thigh, low back pain and the inability to lean forward without pain. He opined that repetitive leaning over a keyboard caused chronic lumbago. The Office found that, as lumbago is another way of reporting low back pain,⁴ Dr. Ward did not provide a firm medical diagnosis. The Board has held that a physician's mere diagnosis of pain does not constitute a basis for payment of compensation as pain is a symptom, not a medical condition.⁵ Furthermore, to the extent that lumbago may be considered a diagnosis, Dr. Ward did not explain why particular employment activities that he identified would cause or aggravate an injury or disease in the back. As noted, part of appellant's burden of proof includes the submission of rationalized medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee. Similarly, in a November 15, 2007 report, Dr. Ward opined that her low back pain was caused by the physical demands of her job. He advised that people who performed low impact repetitive activities with nonergonomic facilities were at risk for degenerative conditions similar to appellant's back condition. Dr. Ward noted that he had patients like appellant with similar back pain and similar jobs. Although his opinion provided some support for causal relationship, he did not identify specific work activities that caused her condition and explain the process by which such activities caused or aggravated a specific degenerative condition. Moreover, Dr. Ward's reasoning supporting causal relationship generally referred to patients with back conditions and did not specifically pertain to appellant's diagnosed condition and her specific workplace situation.⁶

³ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ Lumbago is defined as pain in the lumbar region. Dorland's *Illustrated Medical Dictionary* (30th ed. 2003).

⁵ *See C.F.*, 60 ECAB ____ (Docket No. 08-1102, issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

⁶ Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury. *J.J.*, 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009).

The record also contains several reports and treatment notes from Dr. Bracey dated between June 19 and August 22, 2006. In particular, on June 19, 2006 Dr. Bracey noted that x-rays of appellant's lumbar and cervical spine found moderate degenerative disc disease of L5-S1, degenerative disc disease of the cervical spine and evidence of segmental dysfunction. However, he did not diagnose a spinal subluxation based on his review of x-rays. The Board notes that a chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.⁷ As Dr. Bracey did not diagnose a spinal subluxation based on x-ray, he is not a "physician" under the Act and his reports are of no probative value.⁸

For these reasons, appellant did not submit sufficient medical evidence to establish that she sustained a back condition causally related to her employment duties as a nurse.

On appeal, appellant asserts that the Office informed her that she only needed a diagnosis to complete her claim and therefore she submitted a report from Dr. Ward with a diagnosis. As noted, to establish an injury requires medical evidence with not only a diagnosis, but also a physician's rationalized opinion explaining how the diagnosed condition is causally related to appellant's employment activities. Appellant has not submitted such evidence to the Office.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained an occupational disease in the performance of duty.

⁷ See 5 U.S.C. § 8101(2) (the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist); *Mary A. Ceglia*, 55 ECAB 626 (2004).

⁸ See *A.O.*, 60 ECAB ___ (Docket No. 08-580, issued January 28, 2009); *Isabelle Mitchell*, 55 ECAB 623 (2004).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated February 23, 2009 is affirmed.

Issued: December 14, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board