

On January 10, 2008 appellant, then a 42-year-old nurse practitioner, filed a traumatic injury claim (Form CA-1) alleging that she sustained a low back injury at work on January 4, 2008. Regarding the cause of the injury, she stated, “I think that when I was giving a patient a bath I did further damage to my lower back.” Appellant stopped work on January 4, 2008.

In a January 14, 2008 report, Dr. Steven C. Bailey, an attending Board-certified neurosurgeon, noted that appellant had a one-year history of low back and left lower extremity pain with no known cause.¹ Appellant's symptoms had worsened over the prior 12 months, particularly over the last two weeks. Dr. Bailey stated, "She thinks she may have aggravated things while at work on January 4, 2008." He diagnosed lumbar radiculopathy due to facet arthropathy and lateral recess foraminal stenosis, which was confirmed by an October 27, 2007 magnetic resonance imaging (MRI) scan study. Dr. Bailey recommended surgical treatment given that conservative measures had failed. In a January 14, 2008 form report, he referred to his other January 14, 2008 report for the history of injury, diagnosed lumbar radiculopathy and lumbar foraminal stenosis, and checked a "no" box in response to whether he believed the diagnosed conditions were caused or aggravated by the reported employment activity.

On January 29, 2008 the Office requested that appellant submit additional factual and medical evidence in support of her claim.

In a January 25, 2008 statement, Sylvia Samuelson, a nurse manager at the employing establishment, indicated that appellant advised her on January 7, 2008 that she sustained a back injury on January 4, 2008 while assisting another staff member to bathe a resident. Appellant denied lifting or transferring the patient but had assisted in turning the patient around for care. Ms. Samuelson noted that appellant reported that on January 5, 2008 she woke up with burning and cramping down her left leg, numbness and tingling in both feet, and pain in her back. Appellant reported that she had a history of back problems, including sciatica, prior to starting work with the employing establishment in November 2007.

In a February 4, 2008 report, Dr. Bailey advised that appellant continued to have pain in the left side of her back which ran down to her left foot with more mild right back and leg symptoms. He stated that appellant "feels her symptoms were exacerbated by a work injury on [January 4, 2008]. She is unable to describe any specific details of such injury." Dr. Bailey diagnosed lumbar radiculopathy and noted that appellant still had questions as to whether she sustained a work-related injury on January 4, 2008.

In a February 7, 2008 report, Dr. Steve Villegas, an attending Board-certified internist, indicated that appellant reported that she injured her low back while giving a patient a bath on January 4, 2008. Appellant spoke of having prior back problems dating back two years with no specific injury at that time. She started having left leg pain one year prior and was sent to Dr. Bailey, who recommended surgery but would not perform it until she was cleared by her oncologist due to a leukemia condition. Dr. Villegas diagnosed lumbar sprain, lumbar disc bulges, and lumbar radiculopathy and advised that appellant could return to restricted duty. He stated that the cause of appellant's back problem was not known and posited that more information was necessary.

In a March 3, 2008 decision, the Office denied appellant's claim. It found that she did not submit sufficient medical evidence to establish that her back condition arose in the performance of duty on January 4, 2008.

¹ Dr. Bailey noted that appellant had been through physical therapy, chiropractic treatment, and epidural steroid injections in the past.

In a February 27, 2008 report, Dr. Luis Pagani, an attending Board-certified neurologist, stated that appellant's history of back problems went back two years when she began to feel intermittent back pain radiating to the legs. In 2007 two physicians recommended back surgery. Dr. Pagani noted that appellant reported having increased low back and left leg pain after turning a patient in bed. He opined that appellant had preexisting degenerative changes of her back due to the fact that she had been doing heavy work lifting patients over the past 15 years. These changes preexisted the "last episode at work where she felt aggravation of pain." Dr. Pagani stated that appellant could continue performing light-duty work.² In a form report dated February 27, 2008, he indicated that appellant reported injuring her back when she turned a patient while giving him a bath on January 4, 2004. Dr. Pagani diagnosed herniated lumbar disc and checked a "yes" box indicating that the diagnosed conditions were caused or aggravated by the reported employment incident.

Appellant requested a hearing before an Office hearing representative. At the July 14, 2008 hearing, she confirmed that she had previous problems with her low back prior to January 4, 2008, but asserted that she had not experienced leg symptoms prior to that date. Appellant also stated that back surgery had not been recommended prior to January 4, 2008. On January 4, 2008 she was giving a patient a bath with the help of a nursing assistant and, as she was turning him over, the patient pushed her against the rail and she felt a tug in her back.

In a June 9, 2008 form report, Dr. Jonathan Borden, an attending Board-certified neurosurgeon, noted that appellant reported complaints of low back and left leg pain with some pain into her right thigh. The history of injury was that appellant injured her back by turning a patient over while bathing him. Dr. Borden diagnosed lumbar spondylolisthesis and herniated lumbar disc and recommended surgery. In response to a question regarding the causal relationship between the history of injury and the diagnosis conditions, he stated, "Patient did not have severe symptoms and was working full time until injury of [January 4, 2008]." Dr. Borden indicated that appellant was disabled from January 4 to June 16, 2008. He checked a "yes" box indicating that appellant was known to have a preexisting condition which might have contributed to the diagnosis and/or disability and stated, "Patient treated with conservative care and able to work."

A March 18, 2008 MRI scan of the lumbar spine showed central disc protrusion at L3-4 indenting the thecal sac, degenerative facet change at L4-5 with hypertrophic facet on the left, and a small central disc protrusion at L5-S1 touching the right descending S1 nerve. An April 28, 2008 computerized tomography (CT) scan of the lumbar spine showed marked hypertrophy and facet disease at the L4-5 level and multiple areas of spinal stenosis at L3-4 and L4-5. On May 8, 2008 Dr. Borden performed surgery at L4-5, including decompressive facetectomy, transforaminal interbody arthrodesis, infused bone graft, correction of spondylolisthesis and posterolateral arthrodesis with instrumentation.

In a September 29, 2008 decision, the Office hearing representative affirmed the March 3, 2008 decision. She found that none of the physicians of record provided a rationalized

² The record also contains numerous treatment records from Healthpoint Family Care, dating back to July 2006, which document that appellant had a preexisting back condition.

medical opinion, with a complete history, to establish that appellant sustained a back injury at work on January 4, 2008.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 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.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷ The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁸

ANALYSIS

On January 10, 2008 appellant filed a traumatic injury claim alleging that she sustained a low back injury at work on January 4, 2008 while giving a patient a bath. She later explained that the injury occurred when she was giving a patient a bath with the assistance of another nursing assistant and, as she was turning him over, the patient pushed her against the rail and she felt a tug in her back.

The Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a back injury in the performance of duty on January 4, 2008.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁶ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁷ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁸ *Elaine Pendleton*, *supra* note 4; 20 C.F.R. § 10.5(a)(14).

In a January 14, 2008 report, Dr. Bailey, an attending Board-certified neurosurgeon, advised that appellant had a one-year history of low back and left lower extremity pain with no known cause. Dr. Bailey noted that her symptoms had worsened over the prior 12 months, particularly over the prior two weeks. He stated that appellant thought she sustained an aggravation of preexisting back and leg problems on January 4, 2008. Dr. Bailey diagnosed lumbar radiculopathy due to facet arthropathy and lateral recess foraminal stenosis and recommended surgical treatment. In a February 4, 2008 report, he noted that appellant continued to feel that her symptoms were exacerbated on January 4, 2008, but she was “unable to describe any specific details” of such an injury.

The Board notes that Dr. Bailey did not find that appellant actually sustained an injury at work on January 4, 2008. In fact, in a January 14, 2008 form report, Dr. Bailey provided an opinion that appellant did not sustain a work-related injury on January 4, 2008. He made a general reference to the January 4, 2008 work incident, diagnosed lumbar radiculopathy and lumbar foraminal stenosis, but checked a “no” box in response to whether he believed the diagnosed conditions were caused or aggravated by the reported employment activity.

In a February 7, 2008 report, Dr. Villegas, an attending Board-certified internist, obtained a history that appellant injured her low back while giving a patient a bath on January 4, 2008. He noted that appellant had initially developed back problems two years prior with no specific injury at that time and that she started having left leg pain one year prior. Dr. Villegas diagnosed lumbar sprain, lumbar disc bulges and lumbar radiculopathy; however, he did not provide any opinion that she sustained an injury at work on January 4, 2008. In fact, he stated that the cause of appellant’s back problem was not known and advised that more information was necessary.

In a February 27, 2008 form report, Dr. Pagani, an attending Board-certified neurologist, noted that appellant reported injuring her back when she turned a patient while giving him a bath on January 4, 2004. He diagnosed herniated lumbar disc and checked a “yes” box indicating that the diagnosed conditions were caused or aggravated by the reported employment incident. The Board has held, however, that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, that opinion has little probative value and is insufficient to establish causal relationship.⁹ Appellant’s burden includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning. As Dr. Pagani did no more than check “yes” to a form question, he did not provide a full history of any preexisting back condition or explain how her activities on January 4, 2008 would cause or contribute to the diagnosed conditions. His opinion on causal relationship is of diminished probative value and is insufficient to discharge appellant’s burden of proof. In a February 27, 2008 narrative report, Dr. Pagani had discussed appellant’s two-year history of back problems; however, he did not provide medical rationale explaining how appellant’s complaints would not have been due to her underlying back condition rather than the January 4, 2008 work incident.¹⁰

⁹ *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

¹⁰ Moreover, Dr. Pagani’s opinion on causal relationship is equivocal as he also suggested that appellant’s continuing problems were due to her lifting duties over her 15-year nursing career. See *Leonard J. O’Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956) (finding that an opinion which is equivocal is of limited probative value regarding the issue of causal relationship).

In a June 9, 2008 form report, Dr. Borden, an attending Board-certified neurosurgeon, advised that appellant reported that she injured her back by turning a patient over while bathing him. He diagnosed lumbar spondylolisthesis and herniated lumbar disc and recommended surgery. In response to a question regarding the causal relationship between the history of injury and the diagnosis conditions, Dr. Borden stated, "Patient did not have severe symptoms and was working full time until injury of [January 4, 2008]." He indicated that appellant was disabled from January 4 to June 16, 2008.

Although Dr. Borden suggested that appellant sustained an injury at work on January 4, 2008 he did not provide medical rationale supporting his opinion. His opinion is not based on a complete and accurate factual and medical history in that he did not provide any description of appellant's extensive back problems prior to January 4, 2008.¹¹ Dr. Borden appears to have mischaracterized appellant's prior back problems as not severe but the record reflects that appellant had notable back pain and radiculopathies for a year or two prior to January 4, 2008 and more than one physician had recommended that she undergo back surgery prior to that date. The medical evidence submitted by appellant is not sufficient to establish that the January 4, 2008 incident caused or contributed to her preexisting lumbar condition.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a back injury in the performance of duty on January 4, 2008.

¹¹ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' September 29 and March 3, 2008 decisions are affirmed.

Issued: October 22, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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