

On March 7, 2008 the Office advised appellant that she needed to submit additional factual and medical evidence in support of her claim. It provided her 30 days to submit the requested information.

In a February 28, 2008 report, Dr. Kelly Miller, a chiropractor, diagnosed sacral vertebral subluxation with associated sprain/strain of pelvic girdle muscles, muscle spasm and sciatica.¹ On April 3, 2008 she documented her course of treatment throughout March 2008. Appellant did not undergo x-ray tests during these examinations.

In a decision dated April 11, 2008, the Office denied appellant's claim finding that the evidence was not sufficient to establish a left hip or left leg injuries on February 27, 2008.

On January 7, 2009 Dr. James P. Fitzgerald, Board-certified in orthopedic surgery, stated that appellant had experienced difficulty with pain in her left hip since the February 27, 2008 work incident. He advised that the pain was predominantly on the lateral side of her hip and occasionally radiated into her thigh. Appellant continued to be active in spite of her pain. Dr. Fitzgerald noted that she was able to walk without difficulty and had excellent range of motion in the left hip with good straight leg raise and no obvious atrophy, however, she was exquisitely tender over the superior portion of her greater trochanter. He reviewed x-rays taken six months before and advised that they showed no significant degenerative changes. Dr. Fitzgerald diagnosed trochanteric bursitis and administered a cortisone injection to ameliorate pain.

In a March 4, 2009 report, Dr. Fitzgerald advised that the injection he administered in January 2009 did not provide relief. Appellant continued to complain of left hip pain which extended into the buttock, thigh and down to the left foot, in addition to numbness and tingling. Dr. Fitzgerald was unaware that appellant's injury had occurred at work; however, he now considered this to be a workers' compensation issue. On examination appellant appeared to be neurologically intact with less tenderness over the greater trochanter and a very positive straight leg raise. Dr. Fitzgerald found that appellant had a ruptured disc, most probably L5-S1 on the left. He stated that appellant's injury was definitely work related, although she was not currently disabled from her work. Dr. Fitzgerald recommended that appellant undergo a magnetic resonance imaging (MRI) scan and referred her to a neurosurgeon.

In a March 12, 2009 report, Dr. Ryan P. Den Haese, neurosurgeon, stated that appellant had lumbar degenerative disc disease with vacuum disc phenomenon at L4-5, sacroiliac joint pain and lumbar radiculopathy to the left lower extremity. Appellant rated her complaints of pain as 6 out of 10 in severity. Dr. Den Haese noted complaint of numbness and pain radiating down the posterolateral aspect of the left leg into the lateral aspect of the foot, into the first and second digits, with hip joint pain in her buttock and gluteal region, minimal pain on palpation of her hips and severe pain to deep palpation of the S1 joint. He advised that appellant's range of motion was somewhat limited in her back and was accompanied by pain. Dr. Den Haese noted that standing, lifting, bending and sitting exacerbated her symptoms. He stated that x-rays of

¹ Dr. Miller is not listed as the chiropractor of record in these reports. Appellant identified Dr. Miller as her treating chiropractor for this period during the July 17, 2009 hearing.

May 14, 2008 showed vacuum disc phenomena at L4-5, severe loss of disc height and degenerative disc disease at L3-4 with slight retrolisthesis.

By letter dated March 23, 2009, appellant's attorney requested an oral hearing, which was held on July 17, 2009.

In a March 26, 2009 report, Dr. Fitzgerald advised that appellant continued to experience pain in her low back, buttock and into the hip region with occasional numbness that extended down into her leg. He initially considered her condition to be trochanteric bursitis; but after observing that she did not respond to treatment, he concluded that she had a disc pathology, most probably at L5-S1 on the left. Dr. Fitzgerald advised that appellant's present problems were the direct result of her claimed employment injury. He noted that she had experienced symptoms throughout this time period.

In an x-ray report dated May 14, 2008, Dr. Russell Elwell, a Board-certified radiologist, stated that the left hip joint was unremarkable, with no fracture or dislocation in the left hip. He advised that lumbar x-rays showed severe diffuse degenerative disc disease with severe intervertebral disc height loss, discogenic endplate sclerosis and endplate osteophytes.

Appellant submitted records documenting chiropractic treatment from September 2003 through July 2008. She also submitted physical therapy records dated May 2008 to May 2009.

In an October 19, 2009 decision, an Office hearing representative affirmed the April 11, 2008 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, the Office must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵

² 5 U.S.C. § 8101 *et seq.*

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁷

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Office accepted that appellant lifted a tub of flat mail on February 27, 2008. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.⁹ Appellant has not submitted sufficient medical evidence to establish that the February 27, 2008 employment incident caused her back or leg conditions.

The reports from Dr. Miller, a chiropractor, diagnosed sacral vertebral subluxation with associated sprain/strain of pelvic girdle muscles, muscle spasm and sciatica. These reports are not considered as probative medical evidence under section 8101(2), as the chiropractor did not diagnosis subluxation based on x-rays.¹⁰ The records of Dr. Miller do not support that he obtained an x-ray to support the diagnosis he provided. In addition, the reports from a physical therapist are of no probative medical value. A physical therapist is not a physician as defined under section 8101(2).¹¹

Appellant submitted reports from Dr. Fitzgerald and Dr. Den Haese. On January 7, 2009 Dr. Fitzgerald diagnosed trochanteric bursitis based on her history of experiencing left hip pain since the February 27, 2008 work incident. He stated that x-rays taken six months prior had demonstrated no significant degenerative changes. Dr. Fitzgerald administered a cortisone injection to appellant in January 2009 but it did not provide relief. Following further medical review he considered appellant's condition to be a ruptured disc at L5-S1 on the left. Dr. Fitzgerald referred appellant to Dr. Den Haese, a neurosurgeon, who diagnosed lumbar degenerative disc disease with vacuum disc phenomenon at L4-5, sacroiliac joint pain and

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(ee).

⁷ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

⁹ *Carlone*, *supra* note 5.

¹⁰ 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 and subject to regulation by the Secretary).

¹¹ *Id.*; *A.C.*, 60 ECAB ___ (Docket No. 08-1453, issued November 18, 2008).

lumbar radiculopathy to the left lower extremity. He noted that numbness and pain radiating down the posterolateral aspect of appellant's left leg into with left hip joint pain in her buttock and gluteal region, minimal pain on palpation of her hips, stiffness and severe pain to deep palpation of the S1 joint. Dr. Den Haese advised that x-rays from May 14, 2008 showed vacuum disc phenomena at L4-5, severe loss of disc height and degenerative disc disease at L3-4 with slight retrolisthesis. On March 26, 2009 appellant continued to complain of low back, buttock, hip pain and numbness radiating into the left leg. Dr. Den Haese stated that he had changed his diagnosis from trochanteric bursitis to a left-sided L5-S1 pathology based on her responses to his prescribed courses of treatment and her consistent symptomatology since the February 27, 2008 work incident.

Although Dr. Fitzgerald and Dr. Den Haese provided diagnoses of appellant's condition, they did not adequately address how her back or leg conditions were causally related to the February 27, 2008 work incident. In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality; the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion, are facts which determine the weight to be given to each individual report.¹² The medical reports of record do not explain how picking up a tub of mail would cause or contribute to either the left hip symptomatology or aggravate the degenerative disc disease of her lumbar spine. There is insufficient rationalized evidence in the record that appellant's left hip, leg or low back conditions are work related. Appellant failed to provide fully rationalized, probative medical opinion relating her current condition to any factors of her employment.

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the February 27, 2008 incident would have caused the claimed condition. Accordingly, she did not establish an injury on that date. The Office properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant failed to establish that she sustained injuries to her left hip, left leg or low back on February 27, 2008.

¹² *Michael S. Mina, 57 ECAB 379 (2006).*

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 12, 2010
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