United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 11-903**
	)	**Issued: November 3, 2011**
DEPARTMENT OF VETERANS AFFAIRS, JAMES A. HALEY VETERANS MEDICAL CENTER, Tampa, FL, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 1, 2011 appellant, through her representative, filed a timely appeal from the January 24, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for a period of work-related disability. Pursuant to the Federal Employees' Compensation Act (FECA)[1] 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 met her burden of proof to establish that she sustained disability beginning September 17, 2008 due to her June 20, 2008 employment injury.

[1] 20 C.F.R. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on June 20, 2008 appellant, then a 43-year-old nurse, sustained a lumbar sprain due to a fall she sustained while turning a corner at work. Appellant did not stop work but later began performing light-duty work.

In a July 2, 2008 report, Dr. Eve Hanna, an attending Board-certified emergency medicine physician, stated that appellant complained of back pain from a June 20, 2008 fall when she slipped on the floor at work and landed on both knees and twisted her back. Appellant did well until July 2, 2008, when she assisted an in-patient by engaging in lifting while on light duty. Dr. Hanna indicated that appellant should continue with her light-duty work.

In a September 15, 2008 disability note, Dr. Constantine G. Bouchlas, an attending Board-certified physical medicine and rehabilitation physician, stated that appellant was temporarily totally disabled for two weeks. In a September 23, 2008 report, he noted that appellant presented with back and bilateral leg pain and diagnosed radiculopathy (thoracic or lumbosacral), lumbar myofascial pain and lumbar degenerative disc disease. Dr. Bouchlas did not mention the June 20, 2008 work injury.

On October 9, 2008 appellant filed a claim for compensation (Form CA-7) alleging that her June 20, 2008 injury caused disability from September 17 to 26, 2008. She later filed Forms CA-7 for the periods October 12 to 31, 2008 and November 1, 2008 and continuing.

Appellant's employer stated that appellant was terminated from employment as of October 11, 2008 for administrative reasons unrelated to her June 20, 2008 work injury. By letter dated October 23, 2008, OWCP requested that she submit additional medical evidence to support her claim.

Dr. Bouchlas treated appellant on October 14, 2008 and December 3, 2008, but he made no mention of the June 20, 2008 employment injury. He diagnosed radiculopathy (thoracic or lumbosacral), lumbar myofascial pain and lumbar degenerative disc disease. In an October 14, 2008 disability note, Nabil Gerges, an attending osteopath, indicated that appellant was totally disabled from October 23 to November 4, 2008.

In two December 31, 2008 decisions, OWCP denied appellant's claim for work-related disability from September 17 to 26, 2008 and October 12 to 31, 2008. In a March 18, 2009 decision, it denied her claim for work-related disability for the period commencing November 1, 2008. OWCP found that appellant did not submit sufficient medical evidence to establish that her work stoppages beginning September 17, 2008 were due to her June 20, 2008 employment injury.

Appellant submitted an April 3, 2009 statement in which stated that he was treating her for a herniated nucleus pulposus at L4-5 that rendered her unable to work. Dr. Bouchlas did not mention the June 20, 2008 employment injury.

Appellant requested a telephonic hearing before an OWCP hearing representative. During the May 14, 2009 hearing, appellant testified that she had fully recovered from prior back problems by the time she sustained the June 20, 2008 injury. She asserted that she did not

sustain a new injury on July 2, 2008 but rather experienced continuing pain from her June 20, 2008 injury on that date.

In a July 24, 2009 decision, OWCP's hearing representative affirmed OWCP's denial of appellant's claim for work-related periods of disability beginning September 17, 2008. She found that appellant did not submit sufficient medical evidence to establish her claim.

Appellant submitted a July 6, 2009 affidavit that counsel obtained from Dr. Bouchlas. In response to several questions, Dr. Bouchlas stated that the June 20, 2008 employment accident caused her to sustain a lumbar herniated disc with bilateral radiculopathy, left greater than right. He provided a description of the June 20, 2008 fall noting that appellant reported falling on her knees and having "very bad pain with subsequent radiation into the legs." Dr. Bouchlas described symptoms she experienced that he felt were consistent with a herniated disc.

Appellant also submitted additional medical evidence including March 11 and November 1, 2010 reports of Dr. Bouchlas and an August 27, 2009 report of Dr. Robert J. Rentfro, an attending Board-certified physical medicine and rehabilitation physician. None of these reports mention the June 20, 2008 employment injury

In a January 24, 2011 decision, OWCP affirmed its July 24, 2009 decision finding that the opinion on causal relationship in Dr. Bouchlas' July 6, 2009 affidavit was not well rationalized.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, 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.[2] The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant'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 claimant, 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 claimant.[3]

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

ANALYSIS

OWCP accepted that on June 20, 2008 appellant sustained a lumbar sprain due to a fall she sustained while turning a corner at work. Appellant claimed that this injury caused disability for periods beginning September 17, 2008.

The Board finds that appellant did not submit sufficient medical evidence to meet her burden of proof to establish that she sustained disability for periods beginning September 17, 2008 due to her June 20, 2008 employment injury.

Although appellant submitted several disability notes indicating that she had disability during the claimed period, she submitted only one document from a physician relating her work stoppages to her June 20, 2008 employment injury.

On July 6, 2009 appellant's counsel obtained an affidavit from Dr. Bouchlas, an attending Board-certified physical medicine and rehabilitation physician. In response to several questions from counsel, Dr. Bouchlas stated that the June 20, 2008 employment accident caused appellant to sustain a lumbar herniated disc with bilateral radiculopathy, left greater than right. He provided a description of the June 20, 2008 fall noting that she reported falling on her knees and having "very bad pain with subsequent radiation into the legs."

The Board finds that this opinion is of limited probative value on the relevant issue of the present case because Dr. Bouchlas did not provide any notable reasoning in support of his opinion on causal relationship. OWCP has only accepted appellant's claim for the soft-tissue injury of lumbar sprain. Dr. Bouchlas did not provide any notable medical history of her back condition or provide findings on examination and diagnostic testing that would explain how the June 20, 2008 accident could have caused a herniated disc and radiculopathy. Such medical rationale is especially necessary since he had been treating appellant since September 2008 and never mentioned the June 20, 2008 injury until he produced the affidavit at counsel's request in July 2009. Moreover, Dr. Bouchlas never mentioned the June 20, 2008 injury in the reports he produced after July 2009. He suggested that the timing of appellant's pain complaint supported his opinion but the Board has held that the fact that a condition manifests itself or worsens during a period of employment[4] or that work activities produce symptoms revelatory of an underlying condition[5] does not raise an inference of causal relationship between a claimed condition or disability and employment factors.

For these reasons, appellant did not submit a rationalized medical report relating her June 20, 2008 employment injury to her work stoppages beginning September 17, 2008 and OWCP properly denied her claim.

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.

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained disability for periods beginning September 17, 2008 due to her June 20, 2008 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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