United States Department of Labor
Employees' Compensation Appeals Board

N.R., Appellant	)	
	)	
and	)	**Docket No. 11-1697**
	)	**Issued: May 15, 2012**
DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, Washington, DC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 15, 2011 appellant filed a timely appeal from a June 20, 2011 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 the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a left shoulder injury, right knee meniscus tears, aggravation of cervical degenerative disc disease and lumbar degenerative disc disease, and a consequential left foot injury as a result of her November 2, 2007 work injury.[2]

[1] 5 U.S.C. §§ 8101-8193.

[2] OWCP also issued a June 21, 2011 decision denying appellant's claim for continuation of pay. Appellant did not appeal this decision.

FACTUAL HISTORY

On December 30, 2008 appellant, then a 59-year-old economic assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 2, 2007 she had been involved in a work-related automobile accident and alleged injuries to her back, upper arm and left shoulder. The employing establishment noted that she did not miss time from work.

On January 22, 2009 OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a comprehensive medical report from her treating physician which included a reasoned explanation as to how specific work factors had contributed to her claimed injury.

On January 27, 2009 appellant indicated that she was a field worker and tasked to drive to various areas to work. On November 2, 2007 she had been driving to Fredericksburg, Virginia, for data collection when she was struck by another vehicle. After the car accident, appellant was taken to a hospital emergency room with pain in her left shoulder, neck, back and right knee. She submitted an accident report dated November 2, 2007 which indicated that her vehicle had been struck on the right side and totaled. Appellant sustained bruises, a strained back, right knee and shoulder and was taken to the hospital by ambulance. November 2, 2007 emergency room records noted that she was treated for injuries sustained in a motor vehicle accident. A nurse practitioner diagnosed sprained upper arm and back and degenerative joint disease. Appellant was released to light duty after three days. In a January 18, 2008 report, Dr. Wylie D. Lowery, a Board-certified orthopedist, reviewed a magnetic resonance imaging (MRI) scan of the right knee which found tricompartmental osteoarthritis, moderate joint effusion, severe degeneration of the lateral meniscus, mild degeneration of the medical meniscus with a suspected tear in the meniscal body. On April 18, 2008 he treated appellant for left shoulder pain. Dr. Lowery noted x-rays of the cervical spine showed narrowing at C5-6 and x-rays of the shoulder were normal. Appellant noted that her symptoms began on November 2, 2007 and he diagnosed probable rotator cuff tendinitis of the left shoulder and probable cervical spine strain. On May 1 and 8, 2008 Dr. Lowery noted that injections into the left shoulder were not successful and opined that her symptoms were related to her neck and were radicular in nature. He noted the x-ray of the cervical spine showed moderately degenerative changes at C5-6 consistent with appellant's symptoms and which were apparently aggravated after the accident.

By decision dated March 20, 2009, OWCP denied appellant's claim for compensation finding that the medical evidence was insufficient to establish that the claimed conditions resulted from the accepted accident.

On March 18, 2010 appellant requested reconsideration and submitted a January 6, 2010 report from Dr. John A. Bruno, a Board-certified orthopedist, who treated appellant for right knee problems. She reported being in an automobile accident in November 2007 and being struck in the right knee by an air bag. Dr. Bruno noted that appellant's history was significant for arthroscopic surgery on her right knee in 1989 but was asymptomatic after surgery. Appellant reported that on April 18, 2009 her right knee slipped and she fell down steps at home injuring her left foot and that on May 13, 2009 her right knee gave away again and she fell injuring her low back. She also noted having left shoulder pain after the November 2, 2007

accident. Dr. Bruno opined that in the November 2, 2007 accident appellant sustained trauma to her neck, ribs, right upper extremity, lower back and a contusion and medial meniscus tear of the right knee as none of these body parts were symptomatic prior to the accident.

In a March 18, 2010 report, Dr. M. Scott White, a chiropractor, noted treating appellant on November 5, 2007 for injuries sustained in an automobile collision on November 2, 2007. He noted appellant's complaints of left thoracic pain, neck pain, arm and shoulder pain and hand and finger numbness. Dr. White noted reviewing x-rays from appellant's emergency room visit on November 2, 2007 and noted hypolordosis of the lateral cervical spine consistent with trauma to the neck most likely caused by the automobile collision. He noted the movement of the upper thoracic torso up and toward the impact would have "most likely" caused the thoracic spine subluxations. Dr. White diagnosed subluxation in the cervical and thoracic areas and found they resulted from the November 2, 2007 car collision.

On June 17, 2010 OWCP denied modification of the March 20, 2009 decision.

On July 27, 2010 appellant requested reconsideration. She submitted a May 13, 2009 operative report from Dr. Lowery who performed a right knee partial medial meniscectomy, chondroplasty and microfracture. Dr. Lowery noted that a previous partial lateral meniscectomy had been performed. He diagnosed right knee degenerative joint disease and lateral meniscal tear. In a July 16, 2009 report, Dr. Lowery noted initially treating appellant on January 17, 2008 when appellant reported being involved in a motor vehicle accident on November 2, 2007. He diagnosed cervical spine degenerative disc disease, medically probably not related to the motor vehicle accident of November 2, 2007, cervical spine stain, probably related to the November 2, 2007 accident, right knee degenerative joint disease, not related to the November 2, 2007 accident, right knee aggravation of underlying degenerative joint disease, probably related to the November 2, 2007 accident and left foot metatarsalgia, probably related to the November 2, 2007 accident, secondary to a slip and fall from her right knee injury. Dr. Lowery noted that treatment of the cervical spine, right knee, left shoulder and left foot diagnoses were felt to be related to the motor vehicle accident of November 2, 2007. He noted that the information was purely based on appellant's specific statement on her first evaluation that she had symptoms in these areas following the motor vehicle accident and that his opinion was made without any available information from the date of the accident and the intervening three months before appellant presented to his office.

On March 18, 2011 appellant requested reconsideration. She submitted a December 21, 2010 report from Dr. Lowery, who opined that to a reasonable degree of medical certainty, the automobile accident of November 2, 2007 permanently aggravated appellant's right knee degenerative joint disease which contributed to a consequential slip and fall on April 18 and May 13, 2009 causing the left foot metatarsalgia. Dr. Lowery further opined that the November 2, 2007 automobile accident resulted in a cervical strain. He noted his opinions were based on appellant's history and a review of the emergency room records, x-rays, MRI scan and his examination.

In a decision dated June 20, 2011, OWCP modified the prior decision noting that the evidence established that appellant's cervical strain was causally related to the accident of

November 2, 2007. However, it denied acceptance of left shoulder injury, right medial and lateral meniscus tears, aggravation of cervical degenerative disc disease and lumbar degenerative disc disease, and a consequential left foot injury and aggravation of cervical and lumbar degenerative disc disease on April 18 and May 13, 2009.

LEGAL PRECEDENT

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[3] To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a casual relationship.[4] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7]

When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to claimant's own intentional misconduct.[8] Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[9]

ANALYSIS

Appellant alleges that she injured her left shoulder, sustained right knee meniscus tears, aggravation of cervical and lumbar degenerative disc disease and a consequential left foot injury as a result of a work-related automobile accident on November 2, 2007. OWCP accepted the claim, as noted, for a cervical strain.

[3] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[4] *See M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[5] *See D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

[6] *See Phillip L. Barnes*, 55 ECAB 426 (2004); *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *See V.W.*, 58 ECAB 428 (2007); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[8] *Mary Poller*, 55 ECAB 483, 487 (2004).

[9] *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

The Board finds that the medical evidence is insufficient to establish that appellant developed these additional conditions due to or as a consequence of her work injury.

Appellant submitted a December 21, 2010 report from Dr. Lowery who opined that the November 2, 2007 automobile accident permanently aggravated appellant's right knee, degenerative joint disease and contributed to her slip and fall on April 18 and May 13, 2009 causing the left foot metatarsalgia. Dr. Lowery based his opinion on appellant's history and a review of the emergency room records, x-rays, MRI scan and his examination. The Board finds that, although he supported causal relationship, Dr. Lowery did not provide medical rationale explaining the basis of his conclusions regarding the causal relationship between appellant's conditions and the factors of employment. He did not explain the process by which being involved in an automobile accident would cause the diagnosed condition and why such condition would not be due to any nonwork factors, and especially where the initial emergency room report made no mention of any knee condition and where the record indicates that appellant had a preexisting right knee condition. In a July 16, 2009 report, Dr. Lowery noted initially treating appellant on January 17, 2008 when she reported being involved in the November 2, 2007 accident. In addition to the accepted cervical sprain, Dr. Lowery opined that an aggravation of right knee degenerative joint disease, and left foot metatarsalgia were "probably" due to the November 2, 2007 accident, secondary to a slip and fall due to her right knee injury. He noted that treatment of the cervical spine, right knee, left shoulder and left foot diagnoses were "felt" to be related to the motor vehicle accident. Although Dr. Lowery supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinions regarding the relationship between appellant's nonaccepted conditions and the November 2, 2007 accident. Rather, he noted that his conclusion was purely based on appellant's specific statement on her first evaluation that she had symptoms in these areas following the motor vehicle accident and that his opinion was made without any available information from the date of the accident and the intervening three months before appellant saw him.

On April 18, 2008 Dr. Lowery treated appellant for left shoulder pain which appellant reported began on November 2, 2007. He diagnosed probable rotator cuff tendinitis of the left shoulder and probable cervical spine strain. Similarly, on May 1 and 8, 2008, Dr. Lowery noted an x-ray of the cervical spine showed moderately degenerative changes at C5-6 consistent with appellant's symptoms and which were apparently aggravated after the accident. However, he is merely repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. To the extent that Dr. Lowery is providing his own opinion, the physician failed to provide a rationalized opinion regarding the causal relationship between appellant's automobile accident and any of the conditions not accepted by OWCP. Therefore, these reports are insufficient to meet appellant's burden of proof. Other reports from Dr. Lowery did not specifically address causal relationship.

Also submitted was a January 6, 2010 report from Dr. Bruno who noted that appellant reported being in an automobile accident in November 2007 and being struck by an airbag on her right knee. Dr. Bruno noted that appellant had arthroscopic surgery on her right knee in 1989 but was asymptomatic afterwards. He determined that in the accident of November 2, 2007 appellant sustained trauma to her neck, ribs, right upper extremity, lower back and a contusion and medial meniscus tear of the right knee as none of these body parts were symptomatic prior to

the accident. However, the Board notes that Dr. Bruno's only rationale to support causal relationship was that appellant had no symptoms or problems before the employment injury. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury is insufficient, without supporting rationale, to support a causal relationship.[10]

On March 18, 2010 appellant was treated by Dr. White, a chiropractor, who noted treating appellant on November 5, 2007 for injuries sustained in the November 2, 2007 automobile collision. He reviewed x-rays from the November 2, 2007 emergency room visit and diagnosed subluxation in the cervical and thoracic areas resulted from the November 2, 2007 car collision.[11] Although Dr. White opined that the movement of the upper thoracic torso up and toward the impact would have "most likely" caused the thoracic spine subluxations, he couched his opinion in speculative terms and did not provide sufficient rationale to explain how the motor vehicle accident caused a spinal subluxation.[12]

Appellant also submitted November 2, 2007 emergency room records from a nurse practitioner. The Board has held that treatment notes signed by a nurse are not considered medical evidence as they are not a physician under FECA.[13] Consequently, these documents are not probative medical evidence and do not establish appellant's claim.

Appellant contends on appeal that her other conditions are work related, that there should have been further medical development, that she was terminated due to her injuries, that she had not been reimbursed for medical expenses or leave and that she was considered disabled by the Social Security Administration. As explained, appellant did not meet her burden of proof to establish that conditions other than a neck sprain are work related. Furthermore, eligibility for social security benefits does not establish entitlement to compensation benefits under FECA. The Board has long held that entitlement to benefits under statutes administered by other federal agencies does not establish entitlement to benefits under FECA.[14] The Board notes that, as OWCP accepted appellant's claim for a neck sprain, appellant is eligible to claim appropriate benefits related to this conditions, including lost wages.

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.

[10] *Kimper Lee*, 45 ECAB 565 (1994).

[11] As Dr. White, diagnosed a spinal subluxation based on a review of x-rays, he is considered to be a physician. *See* 5 U.S.C. § 8101(2).

[12] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions which are speculative or equivocal in character have little probative value).

[13] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

[14] *Joseph R. Santos*, 57 ECAB 554 (2006).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that a left shoulder injury, right medial and lateral meniscus tears, aggravation of cervical and lumbar degenerative disc disease and a left foot injury were causally related to the November 2, 2007 work incident.

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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