

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

A.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Edison, NJ, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 16-0556
Issued: June 23, 2016**

Appearances:

*James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 3, 2016 appellant, through counsel, filed a timely appeal from a September 9, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 an injury causally related to the September 12, 2012 employment incident.

FACTUAL HISTORY

On September 12, 2012 appellant, then a 56-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on that same date, she pulled hard to unplug a cord from a forklift battery which caused her to fall back and hit her back against a beam. She stated that

¹ 5 U.S.C. § 8101 *et seq.*

she had to get assistance from coworker Sharell McKnight. Appellant notified her supervisor of the incident on the date of injury. She stopped work and first received medical care on September 13, 2012.

The employing establishment issued appellant a properly completed Form CA-16, authorization for examination, dated September 12, 2012, which indicated that appellant was authorized to seek medical treatment for a strain of the lower back related to the September 12, 2012 employment incident at Christ Hospital, Pallisades Avenue, Jersey City, NJ 07306.

In an accompanying attending physician's report (Form CA-20) dated September 13, 2012, Dr. Valdi Sapira, Board-certified in internal medicine, reported that appellant fell and hit a beam at work on September 12, 2012. He diagnosed back injury. Christ Hospital discharge notes were submitted along with a September 13, 2012 duty status report (Form CA-17) advising appellant that she could resume work on September 14, 2012.

Dr. Alexander G. Salerno, Board-certified in internal medicine, in a September 24, 2012 prescription note, recommended physical therapy for appellant's back and shoulders.

By report dated October 2, 2012, Dr. Howard Kessler, a Board-certified radiologist, related that a magnetic resonance imaging (MRI) scan of the thoracic spine revealed left paracentral disc herniation at T7-8 with mild thecal sac indentation, multiple mild noncompressive disc bulges at T4-5, T5-6, and T6-7, hemangioma at T9, and no intrinsic cord abnormality or foraminal encroachment.

On October 23, 2012 OWCP notified appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was afforded 30 days to respond.

In support of her claim, appellant submitted physical therapy notes dated October 15 through November 12, 2012 documenting treatment for her back. Return to work notes dated September 24 through October 23, 2012 were also submitted for a back injury.

On November 26, 2012 OWCP received additional medical documentation. In forms dated September 13 and 24, 2012, Dr. Salerno diagnosed back sprain. In a November 1, 2012 prescription note, he recommended an MRI scan of the left shoulder noting the diagnosis as rotator cuff. On November 9, 2012 Dr. Salerno completed a Form CA-20 in which he related that appellant had fallen three feet backwards and landed on a beam. He diagnosed disc disease based on an MRI scan of the thoracic spine and noted no history of preexisting injury. Dr. Salerno checked the box marked "yes" when asked if the condition was caused or aggravated by the employment activity described.

By decision dated November 29, 2012, OWCP denied appellant's claim, finding that the evidence of record failed to establish that her degenerative disc disease was causally related to the accepted September 12, 2012 employment incident.

On December 12, 2012 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative.

In support of her claim, appellant submitted physical therapy notes dated November 14 through December 28, 2012.

On January 2, 2013 Dr. Daniel B. Lerer, a Board-certified diagnostic radiologist, reported that an MRI scan of the left shoulder revealed mild diffuse rotation cuff tendinitis with no rotator cuff tendon tear; mild subacromial/subdeltoid bursitis with no appreciable impingement; and moderate size glenohumeral ligament with findings suspicious for a SLAP tear.

By letter dated February 28, 2013, counsel for appellant resubmitted Dr. Salerno's September 24, 2012 physical therapy prescription as well a newly submitted February 19, 2013 report from Dr. Richard A. Boiardo, a Board-certified orthopedic surgeon.

In his February 19, 2013 narrative report, Dr. Boiardo explained that he initially evaluated appellant on December 21, 2012 who complained of pain and restricted motion in the low back, thoracic spine, and left shoulder. He noted past medical and surgical history was noncontributory. Dr. Boiardo explained that appellant sustained a fall at work on September 12, 2012 when she landed on her buttocks and back and injured the left shoulder and thoracic spine. He provided findings on physical examination and reviewed diagnostic studies. Dr. Boiardo noted that an MRI scan of the left shoulder revealed rotator cuff tendinosis, SLAP tear of the glenoid labrum, and evidence of subacromial and subdeltoid bursitis.

An October 2, 2012 MRI scan of the thoracic spine revealed left paracentral disc herniation at T7-8 with mild thecal sac indentation as well as noncompressive disc bulge at T4-5, T5-6, and T6-7. Dr. Boiardo opined that as a direct and causal result of the slip and fall injury appellant sustained in September 2012, she would require arthroscopic surgery to the shoulder including decompression and labral repair, as well as likely surgery for the thoracic spine if conservative management fails. He explained that the traumatic episode clearly supported trauma to the lumbar and thoracic spinal units. Dr. Boiardo noted that the magnitude of injury and the mechanism of injury, including the torsional aspect of the fall, was enough to herniate a disc, and specifically in this instance, the cause of the disc herniation at T7-8. He further stated that appellant's injury was a disc herniation and not degenerative disc disease as alluded to in OWCP's decision. Dr. Boiardo opined that the mechanism of injury would also explain the increased force to the shoulder with an element of torsional which was the mechanism of injury for the labral tear. He concluded that appellant's injuries and necessary surgeries were a direct and causal result of the September 2012 injury. Return to work notes dated December 27, 2012 through February 17, 2013 were submitted.

A hearing was held on March 5, 2013. At the hearing appellant described the employment incident, stating that when she was attempting to unplug the cord from the forklift she went backwards, hitting her mid back on a beam three feet away, causing her to fall to the floor. She sought emergency treatment that same date due to pain in her low back. Following her hospital visit, appellant felt pain in her back as well as her shoulder. She notified her treating physician Dr. Salerno who submitted her for an MRI scan.

By decision dated April 19, 2013, the OWCP hearing representative affirmed the March 5, 2013 decision, finding that the evidence of record failed to establish that her diagnosed conditions were causally related to the September 12, 2012 employment incident. It noted that

appellant alleged that she struck a table leg and fell backwards which was contradicted by Dr. Boiardo's report who stated that she fell on her buttocks.

By letter dated June 20, 2013, appellant, through counsel, requested reconsideration of OWCP's decision.

In a May 6, 2013 narrative statement, appellant provided clarification regarding her injury stating that on September 12, 2012 she was pulling on a forklift battery cable and fell backwards. She struck her middle back on a steel table leg and then fell to the ground landing on her buttocks. Appellant reported that her supervisor, Joe Pelle, had to help her get up from the floor.

By decision dated September 20, 2013, OWCP denied modification of the April 19, 2013 decision, finding that appellant failed to establish that her diagnosed conditions were causally related to the alleged employment incident. It noted that her statement was contradictory as it was unclear if her supervisor had to help her off the floor.

By letter dated October 23, 2013, appellant, through counsel, requested reconsideration of the prior OWCP decision. Appellant submitted an October 6, 2013 narrative statement explaining in detail the September 12, 2012 employment incident and the witnesses present. She noted that Mr. Pelle was unable to submit a statement as he took leave beginning the week of September 12, 2012 and had not returned. Appellant further noted that coworker, Ms. McKnight, witnessed the employment incident.

By decision dated February 12, 2014, OWCP denied modification finding that the evidence of record failed to establish that her diagnosed conditions were causally related to the alleged employment incident. It noted that appellant's statements were contradictory as she reported falling back and striking a table leg while Dr. Boiardo noted a history of falling on her buttocks.

On March 24, 2014 appellant, through counsel, requested reconsideration of OWCP's decision. Counsel argued that an accompanying USPS accident report established that appellant was unplugging a tightly connected battery cable from the forklift, pulled hard, and fell backwards into the floor beam. The report indicated that appellant was harmed by beam and floor and fell to the floor, substantiating appellant's claim that she fell backwards into the table leg then floor.

In a September 13, 2012 USPS accident report, the history of incident was described as, "Employee stated that when she was unplugging the battery cable to the forklift, the connection was tight, and she pulled hard fell backwards into the floor beam." The report further stated that the object or substance directly harming the employee was "beam and floor" and described the cause/circumstance as "falls to floor."

By letter dated April 21, 2014, counsel for appellant resubmitted the September 12, 2012 Form CA-1 to establish that the incident occurred in the manner alleged. He also submitted a September 13, 2012 statement from Ms. McKnight who affirmed appellant's description of the employment incident.

By decision dated June 17, 2014, OWCP's modification of its prior decision, found that the evidence of record failed to establish that her diagnosed conditions were causally related to the accepted September 12, 2012 employment incident. It noted that contrary to the April 19, 2013 decision of the Branch of Hearings and Review, the factual evidence established that appellant fell backwards onto a beam/table leg and then fell down to the floor on her buttocks as she was unplugging the battery cable attached to the forklift.

By letter dated June 12, 2015, appellant, through counsel, requested reconsideration of OWCP's decision. Counsel noted submission of a June 12, 2015 supplemental report from Dr. Boiardo as an addendum to his prior February 13, 2013 report in support of appellant's claim.

In a June 12, 2015 medical report, Dr. Boiardo noted that he last examined appellant on June 8, 2014, having again discussed the mechanism of injury and her progress. Based on his June 8, 2014 examination, he diagnosed herniated disc in the thoracic spine and having undergone left shoulder arthroscopically. Dr. Boiardo described the mechanism of injury as told to him by appellant, stating that appellant was trying to unplug a cord from the battery cable which was attached to the forklift. Appellant asked one of her coworkers to assist her and as she pulled on one side, the coworker pulled on the other side. At that point she went backwards, fell backwards, landed on the beam, and went to the floor.

Dr. Boiardo noted that appellant sustained direct trauma to the back, with an implication that there was an element of twisting since she was pulling, fell directly back on a beam, and also injured her left shoulder. He explained that the direct force of appellant falling backwards was anchored in a certain way by her left upper extremity. Dr. Boiardo reported that appellant fell, and during the course of falling, sustained trauma to the left shoulder and to the low back. He referenced a torsional injury with respect to the back explaining that as one falls and hits a direct object, especially holding on to a cable, there has to be a torsional element to the injury. Dr. Boiardo reported that appellant sustained a labral tear to the left shoulder, either by the direct force of her continued grasp of the cable with her bodyweight pulling against, sustaining a sharp trauma when she struck the table leg. He referenced the February 19, 2013 report for the remainder of the signs and symptoms and treatment course.

Dr. Boiardo further reported that the exact nature of the traumatic injury to the thoracic spine and left shoulder was clearly defined in appellant's testimony which he had the opportunity to review. He reiterated that appellant was holding onto a forklift battery cable with the left upper extremity, having sustained a fall sustaining direct trauma to the steel beam or table leg. Dr. Boiardo explained that unless the steel beam was to impale appellant directly, she had to torsionally twist the upper thoracic spine, as well as continue to hold on to the cable as she did. As such, the force of her body weight while holding on to the cable was enough to possibly sublux the shoulder or at least injure the labrum, causing a separation/tear which was the pathological finding at surgery. Dr. Boiardo opined that as a direct result of the forklift injury and the September 12, 2012 accident, appellant injured the thoracic spine sustaining a herniated thoracic disc at T7-8 and injury to the left shoulder while holding on to the battery cable, sustaining a labral tear which required arthroscopic surgery. He concluded that appellant remained partially permanently disabled.

By decision dated September 9, 2015, OWCP denied modification of its prior decision, finding that the evidence of record failed to establish that appellant's diagnosed conditions were causally related to the accepted September 12, 2012 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA; 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 or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.⁵ 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

OWCP accepted that the September 12, 2012 employment incident occurred as alleged. The issue is whether appellant established that the incident caused her a thoracic spine and left

² Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

³ Michael E. Smith, 50 ECAB 313 (1999).

⁴ Elaine Pendleton, *supra* note 2.

⁵ See 20 C.F.R. § 10.110(a); John M. Tornello, 35 ECAB 234 (1983).

⁶ James Mack, 43 ECAB 321 (1991).

shoulder injury. The Board finds that she did not submit sufficient medical evidence to support that her thoracic disc herniation at T7-8 and a labral tear of the left shoulder are causally related to the September 12, 2012 employment incident.⁷

In medical reports dated February 19, 2013 and June 12, 2015, Dr. Boiardo diagnosed thoracic disc herniation at T7-8 and a labral tear of the left shoulder which he opined was causally related to the September 12, 2012 employment incident. He described the traumatic incident as related to him by appellant when she was trying to unplug a cord from a battery cable attached to a forklift. Appellant pulled on one side of the cord as a coworker pulled on the other side and at that point, she fell backwards, landed on a beam, and then down to the floor. Dr. Boiardo noted that she sustained a direct trauma to the back with the implication that there was an element of twisting since she was pulling, fell directly back on the beam, and also injured her left shoulder. He explained that the traumatic episode clearly supported trauma to the lumbar and thoracic spinal units. Dr. Boiardo noted that the magnitude of injury and the mechanism of injury, including the torsional aspect of the fall, was enough to cause a herniated disc, and specifically in this instance, the cause of the disc herniation at T7-8. He further reported that appellant's left shoulder labral tear was caused by holding on to the battery cable.

The Boards finds that Dr. Boiardo's opinion is insufficiently rationalized. While the physician diagnosed thoracic disc herniation at T7-8, he failed to provide a sufficient explanation as to the cause of this injury. Dr. Boiardo's opinion on causal relationship did not adequately explain how the September 12, 2012 employment incident caused or aggravated her disc herniation other than generally noting the magnitude and mechanism of injury, including the torsional aspect of the fall, was enough to cause a herniated disc. His statement on causation fails to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, appellant's backwards fall landing on her buttocks, would cause or aggravate appellant's disc herniation.⁸

Dr. Boiardo's statement on causation pertaining to the left shoulder tear is also insufficient to establish appellant's claim. His June 12, 2015 report noted that during the course of falling, she sustained trauma to the left shoulder and back. However, Dr. Boiardo's narrative contradicts appellant's statement as she made no allegations of left shoulder contact when falling. Nor did appellant complain of left shoulder pain or injury when seeking emergency medical treatment on September 12, 2012. Dr. Boiardo's further stated that, "The patient was falling, fell backwards, and went down on the floor. At that point, the patient sustained direct trauma to the back, but again the implication is that there is an element of twisting since the patient was pulling, fell directly back on a beam, and the patient also injured her left shoulder." Dr. Boiardo's description of movements made during the September 12, 2012 employment incident is speculative and unfounded by appellant's own allegations as she never described tortional twisting. Moreover, his opinion on causation is unfounded as he is describing physical motions and movements to fit the left shoulder injury, but which were not based on her injury claim. Dr. Boiardo further stated that appellant sustained a labral tear of the left shoulder by the force of her body weight while holding on to the cable. Not only does this opinion vary from his

⁷ See *Robert Broome*, 55 ECAB 339 (2004).

⁸ *S.W.*, Docket 08-2538 (issued May 21, 2009).

prior assertion that she sustained trauma to the left shoulder during the course of falling, he also failed to provide a detailed description of how holding a cable with the force of her body weight would cause a tear in the left shoulder. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.⁹ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹⁰ Without explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions, Dr. Boiardo's opinion on causal relationship is equivocal in nature and of limited probative value.¹¹

Appellant also submitted medical notes and forms dated September 12 through November 9, 2012 from Dr. Salerno. While Dr. Salerno's September 12 and 24, 2012 reports noted a diagnosis of back sprain, he provided no opinion as to the cause of this injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹² Dr. Salerno's November 9, 2012 attending physician's report is also insufficient to support appellant's claim. He diagnosed disc disease based on an MRI scan of the thoracic spine. However, Dr. Salerno's diagnosis is not supported by the objective evidence of record as Dr. Kerrer's October 2, 2012 MRI scan of the thoracic spine did not show evidence of disc disease. He checked the box marked "yes" when asked if the condition was caused or aggravated by the employment activity. The Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.¹³ Thus, Dr. Salerno's reports are insufficient to meet appellant's burden of proof.

The remaining medical evidence is also insufficient to establish causal relationship between appellant's injury and the September 12, 2012 employment incident. While Dr. Kessler and Dr. Lerer's diagnostic reports provided findings pertaining to the thoracic spine and left shoulder, the reports are of limited probative value as the physicians failed to state any opinion on the cause of appellant's injury.¹⁴ The physical therapy notes dated October 15 through December 28, 2012 are also insufficient to establish appellant's claim as they were not signed by

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁰ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹¹ *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

¹² *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹³ *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

¹⁴ *Supra* note 12.

a physician. Registered nurses, physical therapists, and physician assistants are not considered physicians as defined under FECA. Thus, their opinions are of no probative value.¹⁵

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹⁶ An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹⁷ Appellant's honest belief that the September 12, 2012 employment incident caused her medical injury is not in question, but that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused her condition and, taking these factors into consideration, as well as findings upon examination and appellant's medical history, explain how these employment factors caused or aggravated any diagnosed condition, and present medical rationale in support of his opinion.¹⁸

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the September 12, 2012 employment incident and the thoracic disc herniation at T7-8 and left shoulder labral tear. Thus, appellant has failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.¹⁹

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury causally related to the September 12, 2012 employment incident.

¹⁵ 5 U.S.C. § 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See also *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹⁶ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁷ *D.D.*, 57 ECAB 734 (2006).

¹⁸ *Supra* note 10.

¹⁹ The record contains a Form CA-16 signed by the employing establishment official on September 12, 2012. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 Form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 9, 2015 is affirmed.

Issued: June 23, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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