United States Department of Labor
Employees' Compensation Appeals Board

KRISTEN E. HARRIS, Appellant	)	
and	)	**Docket No. 04-2097**
	)	**Issued: February 1, 2005**
DEPARTMENT OF JUSTICE, FEDERAL DETENTION CENTER, Miami, 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:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On August 23, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 22, 2004, denying her traumatic injury claim. Pursuant to 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 sustained a traumatic injury on November 20, 2002 causally related to factors of her federal employment.

FACTUAL HISTORY

On November 20, 2002 appellant, a 35-year-old secretary, filed a traumatic injury claim (Form CA-1) alleging that on that date she slipped and fell on the floor of the employing establishment injuring the right side of her body, her right leg, shoulder and back. Her supervisor corroborated her claim that the injury occurred in the performance of duty.

In support of her claim, appellant submitted a variety of documents, including a medical report dated March 22, 2003 signed by Dr. Chad E. Frank, a chiropractor, which reflected her complaints of left-sided chest pain with radiation to the right-sided chest wall, left neck and left arm and asserted that her pain had been intermittent for approximately one month. Dr. Frank reported that appellant believed her pain might have been related to her fall at work in November 2002, but that she did not recall having had pain after the fall. Although he did not have the benefit of reviewing chest x-rays which had been taken, he noted his impression of "chest pain, costochondritis, somatic dysfunction and muscle spasm." Appellant also submitted five work-status reports signed by Dr. John J. Francavilla, a chiropractor, bearing dates from May 15 through June 20, 2003 and excusing appellant from work "due to patient care."

The remaining substantive medical evidence included a letter dated March 19, 2003 and signed by Dr. Jose R. Rovira, a Board-certified internist, which indicated that appellant's symptoms of generalized musculoskeletal pain were most compatible with a chronic pain syndrome or fibromyalgia; a handwritten letter dated April 4, 2003 signed by Dr. Jeffrey A. Loman, a Board-certified internist, which addressed appellant's "severe generalized musculoskeletal pains;" a handwritten memorandum dated April 15, 2003 and signed by Dr. Loman, which reflected his diagnosis of "chest wall and costochondritis pains and appellant's recurrent evaluations for chest wall muscle spasm and pain;" and Form WH389 dated June 23, 2003 and signed by Dr. Loman, which reiterated his diagnosis of cervical pains, chest wall muscle spasms and costochondritis.

On June 12, 2003 the Office notified appellant that the evidence submitted was insufficient to establish her claim and advised her to provide additional documentation, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. Appellant submitted no further evidence in response to the Office's request.

By decision dated July 24, 2003, the Office denied appellant's claim on the grounds that the evidence failed to establish that the claimed medical condition was causally related to the accepted work-related incident.

On April 23, 2004 appellant submitted a request for reconsideration. In support of her request, appellant submitted Dr. Loman's medical notes; copies of previously submitted reports; and letters and reports signed by him dated December 16, 2003 and January 19, March 26 and April 1, 2004. In his December 16, 2003 letter, Dr. Loman stated that appellant had been unable to work for seven and a half weeks because of severe left shoulder muscle myofascial pain syndrome, as well as severe left anterior chest wall pains from fibromyalgia and left parasternal costochondritis. He opined that she was unable to perform her duties as secretary at her then current level of pain and resultant psychological stress. In his memorandum dated January 19, 2004, Dr. Loman stated that appellant had "nearly continuous chest wall muscle spasms and paraspinal muscle cervical/thoracic muscle spasms with radiation of pain to her chest wall and trapezius area" and had been unable to work since December 15, 2003. In another memorandum dated March 26, 2004, he described again appellant's continuing complaints and added that "she has fibromyalgia, chronic fatigue and recalcitrant left upper trapezius and shoulder spasms."

In his statement dated April 1, 2004, Dr. Loman reported appellant's description of the events surrounding the November 20, 2002 work-related incident, noting her statement that she

slipped and fell on a wet floor at her place of employment and landed on her back. He offered his "definitive diagnosis" that as a result of the November 20, 2002 incident, appellant suffered a contusion to the left shoulder, fractures to the thoracic spine and strain/sprains to the cervical-lumbar spine." Dr. Loman noted that he had reviewed magnetic resonance imaging (MRI) scans and myelogram reports in forming his opinion. He further opined that those conditions caused facial pain along with chronic pain syndrome and that a subsequent alleged injury on May 14, 2003 caused additional damage and "aggravated the accident of November 20, 2002." Dr. Loman also stated his belief that appellant's disability was permanent and that her employment would have to be restricted to a 4-hour day in a job that required no lifting over 10 pounds.

In a decision dated July 22, 2004, the Office denied appellant's request for modification of its July 24, 2003 decision, finding that the evidence submitted did not establish a causal relationship between her current condition and the November 20, 2002 work-related incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of the 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 or specific condition for which compensation is claimed is causally related to the employment injury.[1] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," namely, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.[2]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[3] An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[4]

[1] *Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[2] *Betty J. Smith*, 54 ECAB ___ (Docket No. 02-149, issued October 29, 2002); *see also Tracey P. Spillane*, 54 ECAB ___ (Docket No. 02-2190, issued June 12, 2003). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[3] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[4] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof in establishing that that she sustained an injury causally related to factors of her federal employment on November 20, 2002. As the Office found in its July 24, 2003 and July 22, 2004 decisions, the evidence of record supports the fact that she fell on the employing establishment's floor during the performance of duty on November 20, 2002 at the time, place and in the manner alleged. However, it does not establish that the incident caused a diagnosed condition. The case, therefore, rests on whether the incident caused an injury.

The medical evidence presented does not provide a rationalized medical opinion to establish that the incident caused or aggravated any particular medical condition or disability. In his report dated March 22, 2003, Dr. Frank, noted appellant's complaints of left-sided chest pain, which had been intermittent for approximately one month, with radiation to the right-sided chest wall, left neck and left arm. He further stated her belief that the pain might have been related to her fall at work in November 2002, but that she did not recall having had pain after the fall. Dr. Frank noted his impression of "chest pain, costochondritis, somatic dysfunction and muscle spasm." The Board does not consider his report to be probative medical evidence, as a chiropractor is only considered a physician for purposes of the Act where he diagnoses subluxation by x-ray.[5] As previously stated, Dr. Frank did not take appellant's x-rays, nor did he diagnose subluxation. Therefore, he does not meet the statutory definition of "physician." The five work-status reports signed by Dr. Francavilla also lack probative value because he does not qualify as a "physician" pursuant to the Act.

The March 19, 2003 letter from Dr. Rovira indicated that appellant's symptoms of generalized musculoskeletal pain were most compatible with a chronic pain syndrome or fibromyalgia. However, there was no mention of and no attempt made to draw a connection between the work-related incident of November 20, 2002 and appellant's diagnosed condition.

None of the reports or letters submitted by Dr. Loman prior to the Office's July 24, 2003 decision made any reference to the work-related incident of November 20, 2002. His letter dated April 4, 2003 addressed appellant's "severe generalized musculoskeletal pains" and his memorandum dated April 15, 2003 reflected appellant's recurrent evaluations for chest wall muscle spasm and pain and the physician's diagnosis of "chest wall and costochondritis pains." The Form WH389 dated June 23, 2003 reiterated his diagnosis of cervical pains, chest wall muscle spasms and costochondritis. However, Dr. Loman stated no opinion as to the cause of appellant's condition.

---

[5] Section § 8101(2) of the Act provides as follows: "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 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." *See Merton J. Sills*, 39 ECAB 572, 575 (1988). (A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8101(2)). 20 C.F.R. § 10.311.

In his December 16, 2003 letter, Dr. Loman stated that appellant had been unable to work for seven and a half weeks because of severe left shoulder muscle myofascial pain syndrome, as well as severe left anterior chest wall pains from fibromyalgia and left parasternal costochondritis. He opined that she was unable to perform her duties as secretary at her then current level of pain and resultant psychological stress. In his memorandum dated January 19, 2004, Dr. Loman stated that appellant had "nearly continuous chest wall muscle spasms and paraspinal muscle cervical/thoracic muscle spasms with radiation of pain to her chest wall and trapezius area" and had been unable to work since December 15, 2003. In another memorandum dated March 26, 2004, he described again appellant's continuing complaints and added that "she has fibromyalgia, chronic fatigue and recalcitrant left upper trapezius and shoulder spasms." However, none of the aforementioned reports refers to the November 20, 2002 incident or addresses the cause of appellant's condition and are, therefore, of limited probative value.[6]

Finally, for the first time, in his statement dated April 1, 2004, Dr. Loman reported appellant's description of the events surrounding the November 20, 2002 work-related injury.[7] He reported her statement that she slipped and fell on a wet floor at her place of employment and landed on her back. Dr. Loman offered his "definitive diagnosis" that as a result of the November 20, 2002 incident, appellant suffered a contusion to the left shoulder, fractures to the thoracic spine and strain/sprains to the cervical-lumbar spine." He noted that he had reviewed MRI scans and myelogram reports in forming his opinion. Dr. Loman further opined that the conditions he described caused facial pain along with chronic pain syndrome and that a subsequently alleged injury on May 14, 2003 caused additional damage and "aggravated the accident of November 20, 2002." He also stated his belief that appellant's disability was permanent and that her employment would have to be restricted to a 4-hour day in a job that required no lifting over 10 pounds.

Dr. Loman failed to provide a rationalized medical opinion. His opinion was not based on a complete factual and medical background of appellant and was not supported by medical rationale explaining the nature of the relationship between her diagnosed condition and the November 20, 2002 incident.[8] The facts presented by Dr. Loman nearly a year and a half after the incident do not comport with those presented in November 2002. He stated that appellant slipped and fell on a wet floor at her place of employment and landed on her back. She, however, stated in her CA-1 form that she fell on her right side, right leg, shoulder and back. The distinction being that in the original claim, the right side would have absorbed the impact, as well as the back. Dr. Loman offered his "definitive diagnosis" that as a result of the November 20, 2002 incident, appellant suffered a contusion to the left shoulder, fractures to the thoracic spine and strain/sprains to the cervical-lumbar spine." However, in his December 16, 2003 letter, Dr. Loman stated that appellant had been unable to work for seven and a half weeks because of severe left shoulder muscle myofascial pain syndrome, as well as severe left anterior chest wall pains from fibromyalgia and left parasternal costochondritis. In yet another

---

[6] *Willie M. Miller*, 53 ECAB ___ (Docket No. 02-328, issued July 25, 2002).

[7] *See Conard Hightower*, 54 ECAB ___ (Docket No. 02-1568, issued September 9, 2003). (Contemporaneous evidence is entitled to greater probative value than later evidence.)

[8] *See John W. Montoya,* 54 ECAB ___ (Docket No. 02-2249, issued January 3, 2003).

memorandum dated March 26, 2004, he stated that appellant suffered from "chronic fatigue and recalcitrant left upper trapezius and shoulder spasms." Dr. Loman also noted that he had reviewed MRI scans and myelogram reports in forming his opinion. However, no reports of MRI scans or myelograms appear in the record. Not only was Dr. Loman inconsistent in his diagnosis, but he also provided no rationale explaining the nature of the relationship between any of appellant's diagnosed conditions and the November 20, 2002 incident. His blanket assertion that her condition was related to the employment injury is not sufficient to establish a causal relationship. Dr. Loman is required to explain how appellant's condition is physiologically related to the November 20, 2002 employment injury and to provide medical evidence of bridging symptoms between her current condition and the accepted injury which support the conclusion of a causal relationship.[9] In this case, there is no physiological evidence of record establishing a causal relationship between a diagnosed condition and the accepted November 20, 2002 work-related incident.

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained a traumatic injury causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[9] *Mary A. Ceglia*, 55 ECAB ___ (Docket No. 04-113, issued July 22, 2004).