United States Department of Labor
Employees' Compensation Appeals Board

F.W., Appellant	)	
and	)	**Docket No. 06-1232**
	)	**Issued: September 1, 2006**
DEPARTMENT OF THE NAVY, MARINE CORPS HEADQUARTERS, Washington, DC, Employer	)	

Appearances:
F.W., pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 9, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 22, 2006 merit decision denying that she sustained an employment-related injury on March 31, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), 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 an injury in the performance of duty on March 31, 2003.

FACTUAL HISTORY

On March 31, 2003 appellant, then a 63-year-old human resources assistant, filed a traumatic injury claim alleging that she sustained injury to her neck, shoulders, back, hands, wrists and knees when she tripped on a computer cord and fell on her left side at work on that date. She stopped work on March 31, 2003 and returned to work on April 2, 2003.

In a report dated April 1, 2003, Dr. Alan H. Wynn, an attending internist, stated that appellant reported tripping and falling at work on March 31, 2003. He diagnosed cervicalgia, left knee pain, left shoulder pain and myalgia and checked a "yes" box indicating that these conditions were caused or aggravated by the employment incident.

Appellant underwent physical therapy treatment and continued to report experiencing pain in her neck, back and extremities.

By decision dated July 10, 2003, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an injury in the performance of duty on March, 31, 2003.

Appellant requested reconsideration of her claim and argued that the opinion of Dr. Wynn showed that she had an employment-related condition. By decision dated September 30, 2003, the Office affirmed its July 10, 2003 decision. The Office acknowledged that it had previously erred by neglecting to review the April 1, 2003 report of Dr. Wynn, but determined that the report did not establish that appellant sustained an employment-related injury on March 31, 2003.

Appellant submitted a September 9, 2004 report in which Dr. Charles J. Azzam, an attending Board-certified neurosurgeon, stated that she was scheduled to undergo cervical surgery on September 16, 2004 and would be totally disabled for 8 to 10 weeks postoperatively.[1]

By decision dated October 26, 2004, the Office affirmed its September 30, 2003 decision.

In a report dated May 27, 2004, Dr. Azzam noted that appellant reported injuring her back at work on March 31, 2003 when she tripped over a computer cord and fell on her left side. He stated that she had since experienced neck discomfort and numbness radiating into her right upper extremity, lower back pain, left leg pain and numbness in the dorsum of her left foot. Dr. Azzam recommended that appellant undergo additional diagnostic testing.

The record contains the results of June 9, 2004 magnetic resonance imaging (MRI) scan testing which shows focal protrusions of disc material at C3-4 and C6-7.[2] Appellant also submitted June 22, July 27, August 10 and September 7, 2004 reports in which Dr. Azzam discussed her cervical condition and indicated that she was a candidate for surgical cervical fusion, instrumentation and decompression. The reports indicated that she had restricted motion of the cervical spine, but exhibited a negative Lhermitte's sign.

In a report dated December 6, 2004, Dr. Azzam stated:

> "[Appellant] was seen in neurosurgical consultation on May 27, 2004 for complaints of severe discomfort into her lower back as well as into her neck. [She] reported sustaining a work injury on March 31, 2003 when she tripped over

[1] Appellant submitted other medical evidence indicating that she had been diagnosed with a herniated cervical disc.

[2] The results of nerve conduction studies from June 6, 2004 show bilateral carpal tunnel syndrome.

a computer cord landing on her left side. [Appellant] has since been experiencing discomfort into her neck radiating into her right upper extremity. [She] was found to have on cervical MRI [scan] studies significant disc herniating with canal stenosis and maximally at the C3-4 and C6-7 level with disc herniation to the right side. [Appellant] has no history of neck discomfort or shoulder pain prior to her work-related injury. It is, therefore, believed that the disc herniation [she] has experienced and which caused her to undergo cervical spinal reconstructive surgery at C3-4, C4-5, C5-6 and C6-7 level with fusion and plating are direct results of her work injury she sustained on March 31, 2003."

By decision dated February 22, 2006, the Office affirmed its prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 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.[4] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. 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.[6] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7] The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to or contact with, certain factors, elements or conditions.[8]

[3] 5 U.S.C. §§ 8101-8193.

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

[5] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[6] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[7] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[8] *Elaine Pendleton*, *supra* note 4; 20 C.F.R. § 10.5(a)(14).

ANALYSIS

Appellant claimed that she sustained injury to her neck, shoulders, back, hands, wrists, and knees when she tripped and fell on her left side at work on March 31, 2003. The Board finds that she did not submit sufficient medical evidence to establish that she sustained an employment-related injury on March 31, 2003.

Appellant submitted a December 6, 2004 report in which Dr. Azzam, an attending neurosurgeon, made note of her March 31, 2003 fall and indicated that since the fall she experienced pain in her neck which radiated into her right upper extremity.[9] He indicated that MRI scan testing showed "significant disc herniating with canal stenosis and maximally at the C3-4 and C6-7 level with disc herniation to the right side." Dr. Azzam stated that appellant had no history of neck discomfort prior to March 31, 2003 and noted, "It is, therefore, believed that the disc herniation [she] has experienced and which caused her to undergo cervical spinal reconstructive surgery at C3-4, C4-5, C5-6 and C6-7 level with fusion and plating are [a] direct result of appellant['s] work injury she sustained on March 31, 2003."

Although Dr. Azzam apparently felt that there was a causal relationship between appellant's cervical problems and her March 31, 2003 fall at work, his report is of diminished probative value on the relevant issue of the present case, in that he did not provide adequate medical rationale in support of his conclusion on causal relationship.[10] He did not describe the March 31, 2003 incident in any detail or explain how it could have caused a cervical condition which required surgery more than a year and a half after March 31, 2003. Dr. Azzam made note of appellant's lack of cervical complaints prior to March 31, 2003, but the Board has held that the fact that a condition manifests itself or worsens during a period of employment[11] or that work activities produce symptoms revelatory of an underlying condition[12] does not raise an inference of causal relationship between a claimed condition and employment factors. Medical rationale on the matter of causal relationship is especially necessary in the present case in that Dr. Azzam did not begin to treat appellant until more than a year after March 31, 2003 and the record is lacking significant medical evidence covering the period between mid 2003 and mid 2004. He did not explain why her cervical condition was not due to a preexisting cervical condition or some intervening nonwork source.

Appellant also submitted an April 1, 2003 report in which Dr. Wynn, an attending internist, stated that she reported tripping and falling at work on March 31, 2003. He diagnosed cervicalgia, left knee pain, left shoulder pain and myalgia and checked a "yes" box indicating that these conditions were caused or aggravated by the employment incident. Dr. Wynn did not

[9] Dr. Azzam indicated that he first saw appellant on May 27, 2004 with complaints of severe lower back and neck pain.

[10] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

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

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

provide adequate medical rationale in support of his opinion on causal relationship. The Board has held that, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.[13] Dr. Wynn did not provide any explanation of his opinion on causal relationship and his diagnosis of appellant's condition appears to constitute a repetition of her several pain complaints rather than a clear diagnosis of her medical condition. As he did no more than check "yes" to a form question, his opinion on causal relationship is of little probative value and is insufficient to discharge her burden of proof.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on March 31, 2003.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 22, 2006 decision is affirmed.

Issued: September 1, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[13] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).