United States Department of Labor
Employees' Compensation Appeals Board

M.E., Appellant	)	
and	)	**Docket No. 06-1727**
	)	**Issued: March 12, 2007**
DEPARTMENT OF HOMELAND SECURITY, U.S. SECRET SERVICE, Paris, France, Employer	)	

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument February 7, 2007

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 24, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated March 1 and May 5, 2006, finding that she had failed to establish that her diagnosed cervical condition was causally related to the accepted May 26, 2000 injury. 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 has met her burden of proof to establish that her diagnosed cervical condition is causally related to the accepted May 26, 2000 injury.

FACTUAL HISTORY

On May 26, 2000 appellant, then a 38-year-old special agent, filed a traumatic injury claim alleging that she sustained injuries as a result of a work-related automobile accident on that date. Her official vehicle was hit in the driver's side passenger door, as she was making a left-

hand turn. Appellant experienced pain in her right hip, radiating down the front of her right thigh. On August 9, 2000 the Office informed appellant that the information submitted was insufficient to establish her claim and advised her to submit within 30 days a medical report containing a diagnosis and rationalized opinion explaining how the alleged incident caused or aggravated the diagnosed condition.

By decision dated September 12, 2000, the Office denied appellant's claim, finding that she had failed to establish the fact of injury. The Office accepted that the motor vehicle accident occurred as alleged on May 26, 2000, but found that appellant had failed to submit medical evidence establishing that a diagnosed condition resulted from the incident.

On September 29, 2000 appellant requested review of the written record. She submitted a May 26, 2000 motor vehicle accident report reflecting that she was involved in an accident in Paris, France on that date, while on official business. An August 21, 2000 letter from appellant's supervisor supported her statement that she was on official business at the time of the accident. Appellant submitted an attending physician's report dated June 7, 2000 from Daniel Szwarc, a certified kiniseologist. Noting the date of injury as May 26, 2000, Mr. Szwarc stated that appellant sustained muscular trauma causing inflammation of the cruel nerve at lumbar four regions. By decision dated May 22, 2001, the hearing representative affirmed the Office's September 12, 2000 decision.

On September 25, 2001 appellant requested reconsideration of the May 22, 2001 decision. She submitted an April 5, 2002 report from Dr. Duc M. Nguyen, a treating physician, who stated that appellant had been injured in a work-related motor vehicle accident in France on May 26, 2000 and sustained a second industrial injury in France on January 24, 2002, while carrying a box.[1] Dr. Nguyen provided a diagnosis of degenerative spondylolisthesis at L3-4 and L5-S1. He noted that appellant's "neck also bothers her from the motor vehicle accident at work." On June 2, 2003 Dr. Nguyen indicated that appellant's neck pain had worsened over the previous eight-month period and that she had developed numbness in the left shoulder blade, sometimes radiating down the left forearm and hand. Objective findings included full range of motion in the neck and tightness in the left posterior shoulder girdle. He provided diagnoses of cervical disc protrusions and degenerative spondylolisthesis of L3-4 and L4-5. In a June 25, 2001 report, Dr. Alain Nys, a treating physician, diagnosed degenerative disc disease with pinched L3-4 disc, as well as osteophytosis and spondylothesis at those levels; and degenerative disc disease and spondylothesis at L5-S1.

By decision dated October 3, 2003, the Office affirmed the September 12, 2000 decision as to the denial of appellant's claim. The Office modified its decision to reflect that the medical evidence of record failed to establish a causal relationship between the May 26, 2000 incident and the claimed condition.

On September 15, 2004 appellant submitted a request for reconsideration. She also requested that her claim be expanded to include injury to the cervical spine. Appellant submitted numerous medical reports, including reports dated January 6 and November 5, 2003 and January 6 and February 11, 2004 from Dr. Brian J. Krabak, a Board-certified physiatrist. On

[1] Appellant's January 24, 2002 claim was accepted for back sprain, File No. 252010339.

January 3, 2003 Dr. Krabak diagnosed chronic lower back and neck pain, with underlying degenerative disc disease of the lumbar spine, including degenerative spondylosis at L3-4 and L5-S1. On November 5, 2003 he noted on appellant's report that her neck pain had developed a year before and that her symptoms worsened after her 2000 motor vehicle accident and again after the January 24, 2002 accident. Dr. Krabak noted that x-rays of appellant's cervical spine revealed cervical degenerative disc disease with cervical disc protrusions. In a January 6, 2004 report, he stated that x-rays taken shortly after her May 26, 2000 and January 24, 2002 accidents revealed degenerative changes in the cervical and lumbar spine. Dr. Krabak stated that "based on her history and physical exam[ination], it appears reasonable her symptoms were triggered by her various accidents." On February 11, 2004 he indicated that appellant continued to have chronic cervical regional pain syndrome and lumbar spine pain syndrome, in the setting of underlying cervical and lumbar degenerative disc disease.

Appellant submitted a report dated October 8, 2003 from Dr. Michael Porvaznic, a chiropractor, who stated that she had sustained significant injuries in a May 26, 2000 motor vehicle accident and had a history of neck and low back pain. Dr. Porvaznic provided diagnoses of somatic dysfunction; cervical disc protrusion; degenerative spondylolisthesis at L3-3 and L4-5; cervical spine reverse curve at C3-4, C4-5 and C5-6. In a statement dated November 10, 2003, Mr. Szwarc stated that he had treated appellant from August 7, 2000 through October 16, 2002 for complaints of cervical and lumbar pain. In a report dated March 26, 2004, Dr. Nguyen opined that appellant's low back condition was caused by the May 26, 2000 accident. He also stated that appellant had a cervical disc protrusion that caused pain and numbness radiating down her left arm.

Appellant submitted reports dated September 2 and 14, 2004 from Dr. Thomas C. Schuler, a Board-certified orthopedic surgeon. In a September 2, 2004 narrative report, Dr. Schuler indicated that appellant sustained a significant injury to her neck and lower back in the May 26, 2000 accident, which was exacerbated by a subsequent work injury which occurred on January 24, 2002. He noted marked motor weakness in her upper extremities, with ongoing neck and radicular symptoms. Based upon Dr. Schuler's review of the record, her history and physical examination, he opined to a reasonable degree of medical certainty that appellant's condition was related to her two work-related injuries. In a separate report, also dated September 2, 2004, Dr. Schuler provided diagnoses of cervical disc degeneration, cervical spondylosis, cervical stenosis and cervical radiculopathy. Examination of the cervical spine revealed no evidence of spasm; tenderness to palpation over the left paraspinal area and over the left facet joint at C4-5, C5-6 and C6-7. Appellant demonstrated head extension of 15 degrees with increased pain; left rotation of 70 degrees with increased pain; right lateral flexion of 15 degrees with increased pain; and left lateral flexion of 15 degrees with increased pain. Spurling's test produced neck pain bilaterally. Adson's maneuver, Tinel's wrist test and Phalen's test were normal bilaterally. Reflexes in the left and right biceps, left and right triceps and left and right brachioradialis were 2/4. On September 14, 2004 Dr. Schuler noted that appellant's symptoms had been present for three to four years. He opined that the source of appellant's pain came from the microtears and further microinstability caused by the May 26, 2000 accident.

By decision dated December 29, 2004, the Office modified its October 3, 2003 decision. The Office accepted appellant's claim for back contusion and aggravation of lumbar spondylolisthesis at L3-4 and L5-S1. The Office found that there was insufficient medical rationale to establish a causal relationship between her cervical condition or other lumbar condition and the accepted May 26, 2000 injury.

On March 24, 2005 appellant submitted a March 15, 2005 report from Dr. Schuler who opined that appellant's cervical condition was directly related to the May 26, 2000 accident. Dr. Schuler explained the mechanism of the May 26, 2000 accident, noting that appellant was making a left-hand turn, when her vehicle was struck on the driver's side of the car, just behind the driver. Appellant was restrained at the time of impact and sustained a violent, whiplash-type injury. Noting significant degenerative changes in her neck, herniations, anterolisthesis and instability pattern, Dr. Schuler stated that appellant clearly had a preexisting pathology. He opined that the May 26, 2000 accident most likely worsened these conditions. Dr. Schuler explained that people, who sustain the worst, intractable painful injuries as a result of an accident, are the ones with the worst preexisting degenerative changes. He further opined that the accepted incident caused irreversible cervical damage. Dr. Schuler stated that appellant experienced neck pain within one week after the May 26, 2000 accident, but sought treatment only for her hip and low back problems at that time, due to the excruciating nature of that pain. He indicated that her cervical pain has increased overtime. Dr. Schuler provided diagnoses of cervical listhesis; lumbar spondylolisthesis; cervical and lumbar disc herniations; cervical and lumbar spondylosis; cervical and lumbar stenosis and cervical and lumbar disc degeneration.

By letter dated September 20, 2005, appellant requested reconsideration of the Office's December 29, 2004 decision. She submitted reports dated December 14, 2004 and December 20, 2005 from Dr. Schuler. On December 14, 2004 Dr. Schuler reiterated his earlier diagnoses. On December 20, 2005 he recited the history of injury and discussed the etiology of appellant's condition. Dr. Schuler stated: "The bottom line is, she has cervical and lumbar problems dating back to the 2000 accident, which were significantly aggravated by the 2002 accident."

In a March 1, 2006 decision, the Office denied modification of its December 29, 2004 decision. The Office found that Dr. Schuler's reports were insufficient to establish a causal relationship between the 2000 accident and appellant's cervical condition.

On March 31, 2006 appellant requested reconsideration of the March 1, 2006 decision. In support of her request, she submitted a January 11, 2005 electromyogram/nerve conduction velocity report of the neck; January 6, 2005 physical therapy notes; a September 17, 2004 report of a DEXA scan, measuring appellant's bone density; and reports of magnetic resonance imaging scans of the lumbar and cervical spine dated December 9 and 30, 2004. Appellant submitted a February 28, 2006 report from Dr. Schuler, who stated that appellant was not able to perform the full-time duties of a secret service agent. She also submitted a November 5, 2003 attending physician's report from Dr. Krabak, which described the history of injury work-related injuries which occurred on May 26, 2000 and January 24, 2002. Dr. Krabak provided diagnoses of cervical disc protrusion and degenerative spondylolisthesis at L3-4 and L5-S1.

By decision dated May 5, 2006, the Office denied modification of its December 29, 2004 decision.[2] The Office found that the medical evidence of record failed to establish a causal relationship between appellant's cervical condition and the accepted May 26, 2000 incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of proof to establish the essential elements of 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 or specific condition for which compensation is claimed is causally related to the employment injury.[4] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[5]

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.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] 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.[8] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[9]

---

[2] The Board notes that the Office stated that it was denying modification of its October 3, 2003 decision. However, the October 3, 2003 decision had been modified by the December 29, 2004 decision. Accordingly, the Board finds that the Office's reference to the October 3, 2003 decision was inadvertent.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Robert Broome*, 55 ECAB 339 (2004).

[5] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). 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).

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

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

[8] *Id*.

[9] 20 C.F.R. § 10.303(a).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[10]

ANALYSIS

The Board finds that this case is not in posture for decision as to whether appellant's diagnosed cervical condition is causally related to the accepted May 26, 2000 injury. An employee who claims benefits under the Act has the burden of establishing the essential elements of her claim. 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 the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.[11] However, it is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[12]

The Office accepted that appellant sustained injuries in a work-related accident on May 26, 2000 and accepted appellant's claim for back contusion and aggravation of lumbar spondylolisthesis at L3-4 and L5-S1. The Office, however, found that there was insufficient medical rationale to establish a causal relationship between appellant's cervical condition and the accepted May 26, 2000 injury. The Board notes that the medical evidence of record generally supports that appellant sustained a cervical injury on May 26, 2000.

On March 15 2005 Dr. Schuler opined to a reasonable degree of medical certainty that appellant's cervical condition was directly related to the May 26, 2000 accident. He explained the mechanism of the May 26, 2000 accident, noting that appellant was making a left-hand turn, when her vehicle was struck on the driver's side of the car, just behind the driver. Dr. Schuler stated that appellant was restrained at the time of impact and sustained a violent, whiplash-type injury. Noting significant degenerative changes in her neck, herniations, anterolisthesis and instability pattern, he stated that appellant clearly had a preexisting pathology. Dr. Schuler opined that the May 26, 2000 accident most likely worsened these conditions, explaining that people who sustain the worst, intractable painful injuries as a result of an accident, are the ones with the worst preexisting degenerative changes. He further opined that the accepted incident

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] *See Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); *see also Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

[12] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard, supra* note 11; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

caused irreversible cervical damage. Dr. Schuler stated that appellant experienced neck pain within one week after the May 26, 2000 accident, but sought treatment only for her hip and low back problems at that time, due to the excruciating nature of that pain. He indicated that her cervical pain had increased overtime. Dr. Schuler provided diagnoses of cervical listhesis; lumbar spondylolisthesis; cervical and lumbar disc herniations; cervical and lumbar spondylosis; cervical and lumbar stenosis; and cervical and lumbar disc degeneration. While his March 15, 2005 report provides the most well-rationalized opinion, all of the reports submitted by Dr. Schuler support his contention that appellant's cervical condition is causally related to the May 26, 2000 accident. On December 20, 2005 he stated: "The bottom line is, she has cervical and lumbar problems dating back to the 2000 accident, which were significantly aggravated by the 2002 accident."

The remaining medical evidence of record also supports appellant's claim. Noting that appellant had injured her neck in the 2000 automobile accident, Dr. Nguyen diagnosed cervical disc protrusions. On November 5, 2003 Dr. Krabak noted that x-rays of the cervical spine revealed cervical degenerative disc disease with cervical disc protrusions. He reported that appellant's neck pain worsened after the May 26, 2000 accident and again after the January 24, 2002 accident. On January 6, 2004 Dr. Krabak opined that appellant's symptoms were triggered by her work-related accidents. On October 8, 2003 Dr. Porvaznic, a chiropractor, stated that appellant had sustained significant injuries in a May 26, 2000 motor vehicle accident and had a history of neck and low back pain. He provided diagnoses of cervical disc protrusion and cervical spine reverse curve at C3-4, C4-5 and C5-6. Although Dr. Porvaznic is not a physician as defined by the Act,[13] his report is factually consistent with appellant's history of injury.

The Board finds that appellant has established a *prima facie* case with respect to the claimed cervical condition, sufficient to require further medical development by the Office. The Board has recognized the Office's responsibility in developing claims. Once an employee has made a *prima facie* case, *i.e.*, when she has submitted evidence supporting the essential elements of her claim, including evidence of causal relationship, the Office has the responsibility to take the next step, either of notifying the employee that additional evidence is needed to fully establish the claim or of developing evidence in order to reach a decision on the employee's entitlement to compensation.[14] The Board notes that the reports of the attending physicians are consistent in indicating that appellant sustained a cervical injury as a result of the accepted May 26, 2000 incident. Moreover, they are not contradicted by any medical or factual evidence of record. While the reports are not sufficient to meet her burden of proof to establish the required causal relationship, they raise an uncontroverted inference between appellant's claimed

[13] Section 8101(2) of the Act 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 Merton J. Sills*, 39 ECAB 572 (1988). A chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist. *Mary A. Ceglia*, 55 ECAB 626 (2004); *see also Brenda C. McQuiston*, 54 ECAB 816 (2003); *Kathryn Haggerty*, 45 ECAB 383 (1994).

[14] *Scott R. Walsh*, 56 ECAB ___ (Docket No. 04-1962, issued February 18, 2005). *See also Linda L. Mendenhall*, 41 ECAB 532 (1990).

condition and the accepted incident.[15] On remand the Office should prepare a statement of accepted facts and refer appellant, along with her medical records, for a second opinion examination to obtain a rationalized opinion as to whether her current diagnosed cervical condition is causally related to the accepted May 26, 2000 injury, either directly or through aggravation, precipitation or acceleration. Following such further development as may be necessary, the Office shall issue an appropriate final decision on this issue in order to protect her rights of appeal.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant has met her burden of proof in establishing that her diagnosed cervical condition is causally related to the accepted May 26, 2000 injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 5 and March 1, 2006 are set aside and remanded for further development consistent with this decision.

Issued: March 12, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

[15] *See Virginia Richard, supra* note 11; *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).