

follow-up with her physician and was given work restrictions of no lifting or carrying more than 10 pounds.¹ She stopped work on December 3, 2003 and did not return. Appellant subsequently filed for disability retirement in May 2004. She had a preexisting back condition along with a history of depression and stress.

In a December 11, 2003 note, Dr. Gary Shearer, a Board-certified family practitioner, advised that appellant was not to work for 45 days as the December 3, 2003 fall exacerbated her back condition. In CA-20 reports dated December 16, 2003 and February 17, 2004, Dr. Shearer noted the history of appellant's December 3, 2003 fall and found lumbosacral spasms on examination. He also noted that appellant had a prior history of chronic lumbar strain and lumbar disc syndrome. Dr. Shearer opined, by placing a checkmark in the appropriate box, that appellant' lumbosacral spasms or exacerbation of her lumbar injury were causally related to her December 3, 2003 fall at work and that she was totally disabled beginning December 5, 2003.

By letter dated January 28, 2004, the Office informed appellant of the medical evidence needed to develop her claim, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. It noted that, as there was prior history of cervical and lumbar conditions, the attending physician must provide objective evidence to demonstrate an aggravation or worsening of the preexisting conditions. In response, appellant submitted various copies of requests for accommodation and medical evidence prior to her December 3, 2003 fall.

By decision dated March 29, 2004, the Office found that the medical evidence submitted was insufficient to establish appellant's claim that her cervical and lumbar spinal condition was aggravated by the December 3, 2003 fall.

On April 22, 2004 appellant requested a review of the written record. Additional reports dated April 21 and June 1, 2004 from Dr. Shearer were submitted. On April 21, 2004 Dr. Shearer noted that he examined appellant on December 5, 2003 for her December 3, 2003 fall at work. He advised that she had tripped over a partition at work, fell to the floor on her left side and sustained injury to her back, arm, elbow and hip. Dr. Shearer noted that appellant had some tingling in her back and neck as a result of the fall and received trigger point injections, pain medication, muscle relaxants and anti-inflammatory medication. He stated that appellant had a history of low back problems prior to this injury and opined that the fall caused additional injury due to the escalation of pain in her back and hip. Dr. Shearer opined that the fall on December 3, 2003 caused a worsening of the preexisting condition and rendered her disabled.

On June 1, 2004 Dr. Shearer stated that a magnetic resonance imaging (MRI) scan of March 9, 2004 showed a more prominent disc protrusion of the L5-S1 than on the 2001 MRI scan study. He indicated that "this is objective evidence that the fall on December 3, 2003 resulted in additional injury to her low back." Dr. Shearer further stated that, since the fall, appellant had more muscle spasm and more muscle guarding on examination. A copy of the March 9, 2004 MRI scan report was submitted together with additional CA-20 form reports from Dr. Shearer and reports of lumbar epidural steroid injections dated March 12, April 6 and August 5, 2004.

¹ The signature of the physician who signed the emergency room report is illegible.

By decision dated October 26, 2004, the Office hearing representative set aside the March 29, 2004 Office decision and remanded the case for further development of the medical evidence.

The Office referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Richard Sheridan, a Board-certified orthopedic surgeon, for a second opinion evaluation. In a January 17, 2005 report, Dr. Sheridan reviewed the record, including diagnostic testing and x-ray/MRI scan films and presented his examination findings. He concluded that there was no objective evidence to establish that any specific medical condition resulted from appellant's fall at work on December 3, 2003. Dr. Sheridan stated that there was no medical evidence establishing that the claimed conditions were the result of the accepted incident and no evidence demonstrating that appellant sustained a worsening of any preexisting medical condition. He further noted that, when appellant submitted her CA-1 form, she did not indicate any injury to her lumbar area or to her neck. Dr. Sheridan also stated that the evidence did not support that appellant sustained an injury to her left elbow, hip, or shoulder as claimed. He opined that appellant did not need any work limitations because of or secondary to the incident of December 3, 2003.

Additional progress reports from Dr. Shearer were received along with reports of lumbar epidural steroid injections, physical therapy reports and handwritten pain management notes from St. Luke's hospital.

By decision dated February 8, 2005, the Office found the medical evidence insufficient to establish appellant's claim. On February 14, 2005 appellant requested an oral hearing. Additional reports regarding lumbar epidural steroid injections were received.

By decision dated September 8, 2005, an Office hearing representative set aside the Office's February 8, 2005 decision on the basis that there was a conflict of medical opinion between Dr. Shearer and Dr. Sheridan.

In a July 18, 2005 Form CA-20 report, Dr. W. Ford Threlkeld, a Board-certified family practitioner, noted the history of the December 3, 2003 fall at work. He opined that appellant's chronic lower back pain was causally related to the work injury "per history." Additional CA-20 form reports were also received from Dr. Shearer along with MRI scan reports of June 7, 2005 and an addendum MRI scan report of July 7, 2005, which indicated that the disc protrusion at L5-S1 had increased in size slightly in comparison to the March 10, 2004 prior study.

On September 19, 2005 the Office referred appellant, together with a statement of accepted facts, a set of questions and the medical record, to Dr. LeRoy Shouse, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In an October 12, 2005 report, Dr. Shouse noted appellant's complaints, the history of injury and his review of the record, including diagnostic MRI scans of the lumbar and cervical spine. He noted appellant's MRI scans showed a mild disc protrusion at L5-S1 which seemed to become more significant on the June 7, 2005 examination. Dr. Shouse compared the June 7, 2005 MRI scan to the March 10, 2004 MRI scan and noted that both examinations were after her date of injury. He further noted that appellant had prior low back pain since a motor vehicle accident in 1999. Dr. Shouse also noted that appellant was offered surgery but the neurosurgeon wanted her to lose a significant

amount of weight, which she was not able to do. On objective evaluation, he indicated that appellant had a decrease in her left ankle jerk, but had essentially symmetric calf size which indicated no significant muscle loss in her left calf. Dr. Shouse opined that appellant's trip and fall at work on December 3, 2003 could not be blamed for her continued and worsening back pain according to her history. He noted that appellant had back pain due to a motor vehicle accident prior to her injury, she did not complain of back pain at the time of the injury, and her back pain seemed to have progressed along with the disc protrusion at L5-S1, which became more prominent from the MRI scan taken March 10, 2004, as noted by the June 7, 2005 MRI scan. Dr. Shouse opined that the disc protrusion occurred well after the December 3, 2003 incident and was not due to her trip and fall at work.

By decision dated October 28, 2005, the Office denied the claim on the basis that the weight of the medical evidence, as represented by the opinion of Dr. Shouse, established that appellant's worsening low back condition was not causally related to the December 3, 2003 incident.

On December 10, 2005 appellant disagreed with the Office's decision and requested an oral hearing, which was held April 20, 2006. In a May 9, 2006 report, Dr. Gregory A. Benbow, a Board-certified emergency medicine practitioner for the employing establishment, noted his concerns about the case and generally negated the causal relationship between appellant's pain and the December 3, 2003 fall.

By decision dated June 19, 2006, an Office hearing representative affirmed the Office decision of October 28, 2005. The Office hearing representative accorded determinative weight the impartial medical evaluation of Dr. Shouse.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation; that an injury was sustained while 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁴

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ To establish a 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, based on a complete factual and medical background, supporting such a causal relationship.⁶

Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.⁷ 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.⁸ 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.⁹

Section 8123(a) of the Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹⁰ When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.¹¹

ANALYSIS

The Office denied appellant's claim on the grounds that she failed to establish that she sustained an injury on December 3, 2003. The Office found that appellant fell over a partition wall on December 3, 2003. Appellant sought treatment for the fall the same day at the St. Elizabeth Medical Center and provided a consistent history of the injury as reported on medical reports. The Board finds that appellant's statements are consistent with the surrounding

⁵ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁶ *Michael E. Smith*, *supra* note 3.

⁷ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁸ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ 5 U.S.C. § 8123(a); *see Geraldine Foster*, 54 ECAB 435 (2003).

¹¹ *Manuel Gill*, 52 ECAB 282 (2001).

facts and circumstances and, thus, she has established that she experienced the employment incident on December 3, 2003.

The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained an injury on December 3, 2003 causally related to her accepted fall. Initial emergency room records diagnosed shoulder and hip contusions but did not specifically address causal relationship. Thereafter, appellant sought treatment from Dr. Shearer who opined that the employment incident caused or aggravated her back condition. After referring the matter to Dr. Sheridan for a second opinion, the Office properly found that a conflict existed in the medical opinion evidence between, Dr. Shearer, for appellant, and Dr. Sheridan, for the Office, regarding whether the accepted fall worsened her preexisting low back condition. Accordingly, the Office referred appellant to Dr. Shouse to resolve the conflict.¹²

The Board finds Dr. Shouse's October 12, 2005 report sufficiently well rationalized to establish that appellant's back condition was not caused or aggravated by the December 3, 2004 work-related fall.¹³ In a comprehensive October 12, 2005 report, Dr. Shouse noted appellant's complaints and history of injury. He reviewed the record, including MRI scans of the cervical and lumbar spines, which confirmed the diagnosis of a disc protrusion at L5-S1. Dr. Shouse noted that appellant had prior back pain due to a 1999 motor vehicle accident. He advised that appellant's back pain was secondary to the preexisting degenerative condition and unrelated to her fall at work. Dr. Shouse noted that the initial medical records from the hospital on December 3, 2003 contained no reference to back pain. Appellant had back pain prior to December 3, 2003 due to a nonwork-related 1999 motor vehicle accident. Dr. Shouse stated that the progression of the disc protrusion at L5-S1 shown on the December 7, 2005 MRI scan occurred well after the fall on December 3, 2003. The Board finds his report sufficiently rationalized to accord it special weight.¹⁴ The Office properly found that appellant failed to establish an injury related to her fall at work.

The additional medical evidence from Dr. Threlkeld is insufficient to establish that appellant's back condition was caused by her employment incident. On July 18, 2005 Dr. Threlkeld submitted a form report and indicated that appellant's chronic low back pain was due to the December 3, 2003 fall. He described appellant's history of injury on December 3, 2003 and indicated with a checkmark "yes" that he believed that appellant's condition was caused or aggravated by an employment activity "per history." The Board has held that an opinion on causal relationship which consists only of a physician checking yes to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.¹⁵ Dr. Threlkeld did not submit any specific findings or medical reasoning explaining why appellant's chronic low back pain was caused or

¹² See 5 U.S.C. § 8123(a); *Geraldine Foster*, *supra* note 10.

¹³ *Manuel Gill*, *supra* note 11.

¹⁴ *Id.*

¹⁵ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

aggravated by the employment injury. This report is not sufficient to meet appellant's burden of proof and is insufficient to create a conflict with Dr. Shouse's impartial medical opinion.

Dr. Shearer's subsequent reports are also insufficient to overcome the weight given the report of the impartial medical specialist. The Board notes that Dr. Shearer was on one side of the conflict giving rise to the referral to Dr. Shouse. Accordingly, his reports are not sufficient to overcome the weight given the opinion of the impartial specialist.¹⁶ The additional evidence submitted by appellant fails to offer a medical opinion regarding the cause of appellant's low back condition. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁷ Therefore, these reports are insufficient to meet appellant's burden to establish that her back condition was caused or aggravated by the December 3, 2003 fall.

The weight of the medical evidence establishes that appellant's low back condition is not caused or aggravated by the December 3, 2003 fall. Appellant, therefore, failed to meet her burden of proof as she failed to submit a reasoned medical opinion supporting causal relationship.¹⁸

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she had any employment-related disability or medical condition causally related to her December 3, 2003 fall.

¹⁶ See *John D. Jackson*, 55 ECAB 465 (2004).

¹⁷ *Michael E. Smith*, *supra* note 3.

¹⁸ *Albert C. Brown*, 52 ECAB 152 (2000).

ORDER

IT IS HEREBY ORDERED THAT the June 19, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2007
Washington, DC

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

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

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