

By decision dated July 22, 2004, the Office denied appellant's claim finding that she failed to submit sufficient evidence to establish that her injury occurred in the performance of duty. In a March 14, 2005 decision,¹ the Board reversed the Office's decision. The Board found that there was insufficient evidence to establish that a personal, nonoccupational pathology caused appellant to fall on December 17, 2003. The Board, therefore, found that appellant's fall on December 17, 2003 remained unexplained and was, therefore, compensable. It remanded to the Office for a determination of the nature and extent of any condition and/or disability causally related to the December 17, 2003 fall. The complete facts of this case are set forth in the Board's March 14, 2005 decision and are herein incorporated by reference.

Dr. Joseph D. Paz, an osteopath, submitted reports dated February 16, 2004, May 4 and 16, 2005. In his February 16, 2004 report, he related that appellant was at work on December 17, 2003 when she sustained a slip and fall accident, landing on her left side. Dr. Paz stated:

“[Appellant] states that she developed neck pain and left upper extremity pain. She was evaluated by [a] physician and sent to an orthopedist. [Appellant] states that she had x-rays of her left upper extremity which revealed no fractures. At this time she is awaiting a cervical magnetic resonance imaging [MRI] [scan] approval. [Appellant] also admits that she developed left knee pain approximately one to two weeks ago. She admits [that] she has been on and off of work since January 9, 2004 due to her neck and upper extremity pain. [Appellant's] low back pain is the same as it has been in the past. She states that the Vicodin ES prescribed by her primary care physician does allow her to function on a daily basis; however, does not take the pain totally away. [Appellant] admits [that] she has good and bad days. [She] states [that] she had no neck pain prior to this injury.

“On physical exam[ination] of [appellant's] lumbar spine, [she] has limited range of motion, most obvious in extension. She has bilateral paravertebral tenderness as well as bilateral S1 tenderness to palpation. Straight leg raises are at 90 degrees bilaterally with equivocal low back pain.

“On exam[ination] of [appellant's] upper extremities, muscle strength if 5/5 Patrick's and Maitland's are positive bilaterally. Strength of her lower extremities is normal. Deep tendon reflexes are equal and symmetric.

“On physical exam[ination] of her cervical spine, [appellant] has full range of motion with discomfort noted. She has tenderness in the bilateral paracervical areas that extends laterally on both sides to the shoulders. There is no specific spasm noted, bilaterally. Sharp/dull discrimination is normal. Deep tendon reflexes are equal and symmetric.

¹ Docket No. 05-145 (issued March 14, 2005).

Dr. Paz diagnosed low back pain, failed spinal surgery syndrome, lumbar facet arthropathy, bilateral sacroiliac pain, lumbar degenerative disc disease, neck pain and left upper extremity pain. He concluded:

“Currently, [appellant] will continue with her evaluation of her injury involving the neck and upper extremity with [her physician] and the orthopedist. I advised her that[,] if there is anything from a pain management standpoint that she wishes done, she should inquire with her current treating physician and we would be more than happy to evaluate this problem further.

In his May 4, 2005 report, Dr. Paz reviewed the medical history and stated findings of limited cervical range of motion on extension and rotation, spasm in the left trapezius muscle and bilateral paravertebral tenderness. He advised that appellant had positive Phalens and Tinnels signs on the left, reflexes 1+ equal and symmetric, 5/5 strength bilaterally and sharp/dull discrimination with normal limits. Dr. Paz diagnosed cervical facet syndrome, cervicgia, cervical dystonia, cervical herniated nucleus pulposus, left carpal tunnel syndrome and cervical degenerative disc disease. On May 16, 2005 Dr. Paz administered a posterior cervical facet steroid block at the C4-T1 joints on the right and on the left. He described the procedure and stated findings on examination.

By decision dated June 7, 2005, the Office denied appellant’s claim finding that she failed to submit sufficient medical evidence to establish that she sustained an injury in the performance of duty on December 17, 2003.

By letter dated May 9, 2006, appellant’s attorney requested a review of the written record. She did not submit additional medical evidence.

By decision dated June 26, 2006, an Office hearing representative affirmed the July 5, 2005 decision.

In a report dated January 25, 2006, (received by the Office on July 3, 2006), Dr. Paz stated: “Since her last visit, [appellant] has developed acute worsening of her low back pain and her neck pain. Pertaining to her low back pain, she has pain across her lumbar spine with no lower extremity radiation. Appellant’s neck pain shows left-sided neck pain radiating into the right shoulder and not upper extremity radiation.

“On exam[ination] today, [appellant’s] lumbar range of motion is limited on extension. She has bilateral sacroiliac joint tenderness. Patrick’s and Maitland’s are positive bilaterally. Straight leg raising is positive for low back pain. There is bilateral paravertebral tenderness noted.

“On exam[ination] of [appellant’s] cervical spine, she has decreased rotation and extension. She has left paravertebral tenderness and spasm of the left trapezius muscle.”

Dr. Paz diagnosed bilateral sacroiliac joint pain, lumbar facet syndrome, lumbar degenerative disc disease, cervical dystonia with mild torticollis, cervical facet syndrome and cervical degenerative disc disease.

In a report dated July 11, 2006, Dr. Paz reviewed the history of treatment, stated findings on examination and stated:

“Although [appellant] underwent cervical fusion she was doing extremely well and was able to function normally until her slip and fall accident December 2003. Since this slip and fall she has required multiple medical treatments for her neck with interventional procedures and none have afforded her any long term benefit. It is now solely for control of acute flare ups of [appellant’s] pain. The subsequent MRI [scan] in 2004[,] after [her] slip and fall showed a new central disc herniation at C6-7 and a new left paracentral disc herniation at T1-2 which were not present on previous MRI [scans] prior to the fall.

“I believe within a reasonable degree of medical certainty that [appellant] has and will continue to have significant neck pain from the slip and fall occurring at work in December 2003. She will require pain medicine and cervical injections in the form of steroid injections and possibly future Botox injections along with physical therapy, muscle relaxants and anti-inflammatories since her pain and treatment will be ongoing and chronic.”

By letter dated December 26, 2006, appellant’s attorney requested reconsideration. By decision dated March 23, 2007, the Office denied appellant’s request for modification.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing that 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually

² 5 U.S.C. § 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

experienced the employment incident at the time, place and in the manner alleged.⁵ 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.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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

ANALYSIS

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established by medical evidence.⁸ Appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on December 17, 2003 caused a personal injury and resultant disability.

In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹⁰ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

In this case, appellant submitted reports from Dr. Paz who stated findings on examination and indicated that she had pain in her neck, left upper extremity, low back and left knee which has kept her out of work since January 9, 2004. Dr. Paz noted that appellant had no neck pain prior to the December 17, 2003 injury with limited range of motion in the lumbar and cervical spine on extension and rotation, spasm in the left trapezius muscle and bilateral paravertebral tenderness. He stated that she had normal strength in her lower and upper extremities. Dr. Paz made the following diagnoses: (1) low back pain; (2) failed spinal surgery syndrome; (3) lumbar

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁷ *Id.*

⁸ *John J. Carlone*, *supra* note 5.

⁹ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁰ *Id.*

facet arthropathy; (4) bilateral sacroiliac pain; (5) lumbar degenerative disc disease; (6) neck pain and left upper extremity pain; (7) cervical facet syndrome; (8) cervicgia; (9) cervical dystonia (10) cervical herniated nucleus pulposus; and (11) cervical degenerative disc disease.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹¹ Although Dr. Paz did present several diagnoses of appellant's condition, he did not sufficiently explain whether these conditions were caused by the December 17, 2003 employment injury. There is no indication in the record, therefore, that these conditions were work related. As appellant failed to submit any probative medical evidence establishing that she sustained an injury in the performance of duty on December 17, 2003, the Office properly denied her claim for compensation in its June 5, 2005 and June 26, 2006 decisions.

Following the June 26, 2006 decision, appellant requested reconsideration and submitted January 25 and July 11, 2006 reports from Dr. Paz who indicated that she had experienced worsening of her low back and neck pain. Dr. Paz reiterated that appellant had limited lumbar range of motion on extension in addition to bilateral sacroiliac joint tenderness and bilateral paravertebral tenderness. He found that appellant had decreased rotation and extension of her cervical spine and left paravertebral tenderness and spasm of the left trapezius muscle. Dr. Paz diagnosed bilateral sacroiliac joint pain, lumbar facet syndrome lumbar degenerative disc disease, cervical dystonia with mild torticollis, cervical facet syndrome and cervical degenerative disc disease. Contradicting his previous statements that appellant had not had any neck complaints prior to the December 2003 fall, Dr. Paz noted that she had previously undergone a cervical fusion, but that a 2004 MRI scan showed a new central disc herniation at C6-7 and a new left paracentral disc herniation at T1-2, which were not present on previous MRI scans prior to her December 17, 2003 fall. Dr. Paz concluded that appellant would continue to experience significant neck pain from the slip and fall occurring at work in December 2003.

Although Dr. Paz's January 25 and July 11, 2006 reports presented various diagnoses of knee, low back and cervical conditions, he did not provide a rationalized, probative medical opinion indicating how these conditions were causally related to the December 17, 2003 fall. He indicated that appellant experienced pain and discomfort in her lower back, neck and left knee due to the December 17, 2003 slip and fall; however, he did not provide a medical opinion which sufficiently described or explained the medical process through which the December 17, 2003 work incident caused an injury. As appellant has failed to submit any probative medical evidence establishing that she sustained an injury in the performance of duty, the Office properly denied her claim for compensation. The Board, therefore, affirms the March 23, 2007 decision.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an injury in the performance of duty on December 17, 2003.

¹¹ See *Anna C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2007 and June 26, 2006 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 16, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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