United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 08-1139**
	)	**Issued: September 24, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Big Spring, TX, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 10, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 8, 2008 merit decision rescinding its acceptance of her claim for back conditions. 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 the Office met its burden of proof to rescind its acceptance of appellant's claim for back conditions.

FACTUAL HISTORY

On June 21, 2007 appellant, then a 58-year-old vocational nurse, filed a traumatic injury claim alleging that she sustained injury to her left wrist, left hip and back due to tripping on a bed alarm cord at work on March 1, 2007. She stopped work on June 12, 2007.

In a June 12, 2007 report, Dr. Pablo Teveni, an attending Board-certified family practitioner, stated that appellant reported that five to six weeks prior "she fell and broke her fall with her left outstretched arm and landed on her buttock and left side, bouncing off concrete." Appellant indicated that "[s]omething was funny" about her left forearm but it was getting better. Dr. Teveni stated, "The only problem she has now is her low back bothering her as usual and now is having left hip pain."[1] He indicated that appellant reported having numbness that went down into her left lower leg and foot and diagnosed persistent low back pain, left hip pain and wrist pain "probably secondary to strain." On June 14, 2007 Dr. Teveni stated that appellant was visiting to follow up on a magnetic resonance imaging (MRI) scan test she underwent "after hurting her back." He discussed the findings of the test, diagnosed bulging L5-S1 disc and recommended light-duty work.[2]

On July 25, 2007 the Office requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted a June 26, 2007 report in which Dr. Lawrence Voesack, an attending Board-certified orthopedic surgeon, stated that she had complaints of low back pain radiating into her left leg for three years. Dr. Voesack diagnosed lumbalgia, lumbar radiculopathy, facet arthropathy at L5-S1, Grade 1 spondylolisthesis and possible pars fracture at L5. On July 6 and 20, 2007 he stated that appellant continued to complain of low back pain with radiation into her legs. In several notes from mid July 2007, Dr. Voesack diagnosed spondylolisthesis at L5-S1 and indicated that appellant was not able to work.

In an August 6, 2007 letter, the Office indicated that it had accepted that appellant sustained "spondylolisthesis" and "thoracic or lumbosacral neuritis or radiculitis" on March 1, 2007. However, on August 8, 2007 it again requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted an August 7, 2007 statement in which a coworker stated that on March 1, 2007 she witnessed her trip on a bed alarm cord at work and fall to floor while trying the break her fall with her left hand. The coworker indicated that appellant "bounced a couple of times on the floor."

In a September 10, 2007 decision, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a work-related injury on March 1, 2007. The decision did not mention the Office's August 6, 2007 acceptance of appellant's claim.

Appellant submitted a September 14, 2007 report in which Dr. Kevin Gill, an attending Board-certified orthopedic surgeon, stated that she reported tripping on a cord and falling at

[1] On February 2, 2007 Dr. Teveni stated that appellant came in complaining of low back pain and exhibited slight tenderness of the lumbosacral area upon palpation.

[2] The findings of the June 12, 2007 MRI scan testing showed a bulging L5-S1 disc with severe arthrosis, synovitis and stress reaction. The thecal sac was intact and there was a very mild degree of impression on both S1 nerve roots. The L4-5 disc exhibited mild facet joint arthrosis and bulging without significant stenosis. The report listed appellant's clinical history as "left hip pain, fall, weakness."

work and that "she had the onset of clinical issues." Dr. Gill diagnosed Grade 1 degenerative spondylolisthesis at L5-S1 with vertebral body slippage and complete wear and mild foraminal stenosis at L4-5 without slippage. On September 26, 2007 he indicated that appellant was seen on September 14, 2007 "following a work injury." Dr. Gill stated that due to her marked degenerative joint and disc disease at L5-S1 appellant was advised to remain off work until the beginning of 2008.

In an October 8, 2007 statement, appellant indicated that on March 1, 2007 she tripped on a bed alarm cord at work and fell on her left side. She indicated that she tried to break her fall with her left hand and bounced twice on the floor. Appellant requested a review of the written record by an Office hearing representative and submitted additional reports of diagnostic testing.[3]

In a February 8, 2008 decision, the Office hearing representative affirmed and modified the Office's September 10, 2007 decision to reflect that the prior acceptance of appellant's claim for "spondylolisthesis" and "thoracic or lumbosacral neuritis or radiculitis" should be rescinded. The Office hearing representative found that the prior acceptance of appellant's claim for back conditions was improper because the record did not contain a rationalized medical report relating these conditions to the March 1, 2007 fall at work. She indicated that none of the treating physicians provided a clear opinion that appellant's back conditions were due to the fall at work rather than a preexisting nonwork-related back problem.[4] The Office hearing representative stated that Dr. Gill suggested that appellant suffered a work injury due to a fall but noted that his ostensible opinion on causal relationship did not take into account appellant's long-standing nonwork-related back and left leg problems.

LEGAL PRECEDENT

Section 8128 of the Federal Employees' Compensation Act provides that the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application.[5] The Board has upheld the Office's authority to reopen a claim at any time on its own motion under section 8128 of the Act and, where supported by the evidence, set aside or modify a prior decision and issue a new decision.[6] The Board has noted, however, that the power to annul an award is not an arbitrary one and that an award for compensation can only be set aside in the manner provided by the compensation statute.[7]

Workers' compensation authorities generally recognize that compensation awards may be corrected, in the discretion of the compensation agency and in conformity with statutory

[3] Appellant also submitted copies of medical records that were already in the case record.

[4] The Office hearing representative indicated that Dr. Teveni, Dr. Voesack and Dr. Gill did not have a fully accurate history of appellant's fall at work.

[5] 5 U.S.C. § 8128.

[6] *John W. Graves*, 52 ECAB 160, 161 (2000).

[7] *See* 20 C.F.R. § 10.610.

provisions, where there is good cause for so doing, such as mistake or fraud. It is well established that, once the Office accepts a claim, it has the burden of justifying the termination or modification of compensation benefits. This holds true where, as here, the Office later decides that it erroneously accepted a claim. In establishing that its prior acceptance was erroneous, the Office is required to provide a clear explanation of the rationale for rescission.[8]

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 she actually experienced the employment incident at the time, place and in the manner alleged.[9] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[10] 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 which includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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.[11]

ANALYSIS

On August 6, 2007 the Office accepted that appellant sustained "spondylolisthesis" and "thoracic or lumbosacral neuritis or radiculitis" due to a fall at work on March 1, 2007.[12] In a February 8, 2008 decision, the Office rescinded its prior acceptance of appellant's claim for these back conditions.

The Board finds that the Office provided sufficient justification rescinding its prior acceptance of appellant's claim for back conditions. The Office properly found that the rescission was appropriate because the record did not contain a rationalized medical report relating these accepted conditions to the March 1, 2007 fall at work. In a June 12, 2007 report, Dr. Teveni, an attending Board-certified family practitioner, indicated that appellant reported that five to six weeks prior "she fell and broke her fall with her left outstretched arm and landed on

[8] *John W. Graves, supra* note 6.

[9] *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).

[10] *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).

[11] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[12] Appellant indicated that on March 1, 2007 she tripped on a bed alarm cord at work and fell on her left side while trying to break her fall with her left hand.

her buttock and left side, bouncing off concrete."[13] He diagnosed persistent low back pain, left hip pain and wrist pain "probably secondary to strain" and the Office properly noted that he did not provide a clear opinion that appellant sustained a back injury or any other injury due to the March 1, 2007 fall at work.

In several reports from June and July 2007, Dr. Voesack, an attending Board-certified orthopedic surgeon, diagnosed lumbalgia, lumbar radiculopathy, facet arthropathy at L5-S1, Grade 1 spondylolisthesis and possible pars fracture at L5. The Office correctly noted that Dr. Voesack did not provide a clear opinion that appellant sustained injury due to a March 1, 2007 fall.[14] It indicated that, in fact, Dr. Voesack reported that appellant had been complaining of back and left pain for three years. The Office stated that Dr. Gill, an attending Board-certified orthopedic surgeon, suggested that appellant suffered a work injury due to a fall and properly noted that his ostensible opinion on causal relationship did not take into account appellant's long-standing nonwork-related back and left leg problems.[15] For these reasons, it provided justification for the rescission of its acceptance of appellant's claim for back conditions.

CONCLUSION

The Board finds that the Office met its burden of proof to rescind its acceptance of appellant's claim for back conditions.

[13] The Board notes that appellant's March 1, 2007 fall would have occurred more than five or six weeks prior to June 12, 2007.

[14] Dr. Voesack did not describe the March 1, 2007 fall.

[15] *See supra* note 11 and accompanying text regarding the need for an opinion on causal relationship to be based on a complete and accurate factual and medical history.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 8, 2008 decision is affirmed.

Issued: September 24, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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