

FACTUAL HISTORY

On July 17, 2008 appellant, a 49-year-old transportation security officer, filed a traumatic injury claim¹ (Form CA-1) alleging that, on July 14, 2008, as she was going to an office to speak with a scheduling officer, she walked into a partition wall, sustaining an aggravated lumbar disc problem.²

On March 12, 2007 Dr. Chason Hayes, a Board-certified orthopedic surgeon, performed arthroscopic surgery on appellant's left shoulder. He diagnosed left shoulder rotator cuff syndrome and global instability.

Appellant submitted a July 15, 2008 progress note from Ann Watts, a nurse practitioner, who noted appellant's history of injury and thereafter assessed her condition as low back pain with radiculopathy and left shoulder pain.

On July 16, 2008 Dr. Neal M. Goldberger, a Board-certified anesthesiologist, noted appellant's history of injury, reported findings on examination and diagnosed nerve root irritation with radicular pain as well as bilateral sacroiliac joint bursitis.

On July 18, 2008 Dr. Hayes noted appellant's history of injury, reported findings on examination and diagnosed recurrent left shoulder instability and acute lumbar strain.

On August 1, 2008 Dr. David Nelson, a radiologist, reported that magnetic resonance imaging (MRI) scans of appellant's lumbar spine revealed small disc protrusions at multiple levels, some degenerative changes in her lumbar spine and sacroiliac joints bilaterally, and a transitional type vertebral body at the lumbosacral junction.

On August 13 and September 10, 2008 Dr. Goldberger reported that appellant was post left shoulder arthroscopic surgery. He diagnosed bilateral sacroiliac joint bursitis and lumbar nerve root irritation.

In a September 10, 2008 note, appellant described the events of July 14, 2008, her symptoms, medications, her history of injury as well as her other back-related workers' compensation claims.

¹ In addition to several prior shoulder-related traumatic injury claims, appellant has two prior back-related traumatic injury claims. Under claim number xxxxxx892, on January 29, 2004 appellant allegedly sustained a pulled low back muscle. This claim was administratively accepted without review for a limited time and medical expense. Under claim number xxxxxx192, on April 1, 2005 appellant allegedly sustained a traumatic injury. This claim was accepted for lumbar strain, but all benefits were terminated by decision dated June 13, 2006 because the Office found that the accepted condition had resolved. This decision was affirmed on appeal after appellant sought reconsideration.

² The Board notes that the Office issued a Form CA-16. A properly executed Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989). The CA-16 issued to appellant did not authorize either examination or treatment and was therefore not properly executed.

By decision dated October 1, 2008, the Office denied the claim. While it accepted that the incident occurred as alleged, it denied the claim because the medical evidence of record did not demonstrate that the accepted employment incident caused a medically-diagnosed injury.

On October 6, 2008 appellant, through her attorney, requested an oral hearing.

Following a hearing conducted on February 18, 2009, at which appellant described the events of July 14, 2008, by decision dated April 20, 2009, the Office affirmed its October 1, 2008 decision because the evidence of record did not establish that the accepted employment incident caused a medically-diagnosed injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of proof to establish the essential elements of his claim by the weight of the evidence,⁴ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁵ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁶ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

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 employee'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 employee, 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 employee.⁸

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *G.T.*, *supra* note 5; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁸ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The Office accepted that the employment incident occurred as alleged. Appellant's burden is to establish that the accepted employment incident caused a medically diagnosed injury. As noted above, causal relationship is a medical issue that can only be proven through production of rationalized medical opinion evidence.⁹ Appellant has not submitted sufficient medical opinion evidence and therefore the Board finds she has not established that she sustained an injury in the performance of duty on July 14, 2008.

Although Drs. Goldberger and Hayes related appellant's history of injury and diagnosed several conditions, they never explained how the accepted employment incident caused or aggravated any of the conditions they diagnosed.¹⁰ Appellant must submit rationalized medical evidence which based on an accurate history of injury, explains how the employment injury physiologically caused the diagnosed condition. She did not submit any rationalized medical evidence in support of her claim. This deficiency reduces the probative value of the medical opinions such that their reports are insufficient to satisfy appellant's burden of proof.¹¹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.¹²

The Board finds appellant has not established that she sustained an injury in the performance of duty on July 14, 2008 causally related to her employment.

CONCLUSION

The Board finds appellant has not established that she sustained an injury in the performance of duty on July 14, 2008 causally related to her employment.

⁹ Appellant submitted reports signed by a nurse practitioner. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Act, their reports and opinions do not constitute competent medical evidence. 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983). Therefore these reports have no evidentiary value.

¹⁰ *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹¹ *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

¹² *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2009 and October 1, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 30, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board