

On October 31, 2007 the Office requested additional factual and medical information concerning appellant's claim. No further evidence was submitted.

By decision dated December 7, 2007, the Office denied appellant's claim on the grounds that fact of injury was not established.

On January 25, 2008 appellant requested reconsideration and submitted an October 26, 2007 police report along with her personal statement of December 19, 2007, which indicated that the motor vehicle accident occurred on October 26, 2007 at approximately 3:00 p.m. on northbound Riverside Drive when the vehicle in the right lane cut across her in an attempt to make an illegal U-turn at 148th street. In her statement, appellant indicated that she was driving a postal truck on a collections route along Riverside Drive when the motor vehicle accident occurred. She further stated that her neck and lower back were injured as a result of the motor vehicle accident.

In a November 2, 2007 report, Dr. Stephanie Bayner, a physiatrist, noted that on October 26, 2007 appellant was driving a post office vehicle and had a collision with another car. She noted appellant was receiving physical therapy, acupuncture and chiropractic treatment with improvement. An impression of rule out cervical radiculopathy/disc bulge/herniated disc; cervicgia; thoracalgia; and rule out lumbosacral radiculopathy/disc bulge/herniated disc was provided. In a November 9, 2007 report, Dr. Bayner advised that appellant was totally disabled due to her injuries.

In a December 3, 2007 report, Dr. Richard Birrer, a physiatrist, noted that appellant had been involved in a work accident on October 26, 2007 and sustained injuries to her neck, mid back and low back. He provided examination findings and diagnosed post-traumatic headache, muscle spasm, possible lumbar disc bulging and possible lumbar disc herniation. Dr. Birrer opined that appellant was totally disabled and that the October 26, 2007 injury was the cause of appellant's impairment and disability. In a November 5, 2007 prescription note, he prescribed appellant a Liboderm patch.

In a December 21, 2007 medical report, Dr. Ihab Ibrahim, a physiatrist, noted that appellant was involved in a work-related accident while driving a postal truck. He stated that she sustained injuries to her head and back and has not worked since the accident. Dr. Ibrahim diagnosed lumbosacral paraspinal muscle spasm and lumbar radiculopathy. He opined that the October 26, 2007 injury resulted in appellant's current impairment and disability.

In a January 25, 2008 medical report, Dr. Beth Massey, a family practitioner, noted appellant was involved in a motor vehicle accident on October 26, 2007 while working for the employing establishment. She advised that appellant sustained injuries to her neck and lower back and noted magnetic resonance imaging (MRI) scan studies revealed disc herniations at C3-4 and C4-5 and disc bulge at L5-S1. Dr. Massey opined that appellant was totally disabled and had been since October 26, 2007.

In a February 11, 2008 report, Dr. Cyrus Vosough, a physiatrist, noted appellant was involved in a work accident on October 26, 2007 and sustained injuries to her neck and low back. He diagnosed myofascial pain syndrome, cervical disc herniation, lumbar disc bulging and

lumbar radiculopathy. Dr. Vosough advised that appellant was totally disabled and opined that the October 25, 2007 work injury caused her impairment and disability. In a January 14, 2008 report, he diagnosed limited trunk mobility and muscle spasms at L3, L4 and L5.

Copies of November 12, 2007 sensory nerve conduction test of the bilateral upper extremities, a December 17, 2007 MRI scan of the lumbar spine, and a December 17, 2007 MRI scan of the cervical spine were received along with musculoskeletal testing performed on October 31 and December 28, 2007. Also received were a series of physical therapy notes and pain management surgical notes from November 2007 to March 2008, signed by a physical therapist and a registered physician's assistant.

By decision dated April 10, 2008, the Office modified its December 7, 2007 decision to reflect that appellant had established that the employment incident occurred, but it denied the claim on the grounds that appellant did not establish a causal relationship between a diagnosed condition and the employment incident.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office must first determine whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component of fact of injury is whether the incident caused a personal injury, and, generally, this can be established only by medical evidence.⁴

When determining whether the implicated employment factors caused the claimant's diagnosed condition, the Office generally relies on the rationalized medical opinion of a physician.⁵ To be rationalized, the opinion must be based on a complete factual and medical

¹ The record contains additionally medical evidence following the Office's April 10, 2008 decision. The Board, however, notes that it cannot consider this evidence for the first time on appeal as the Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

background of the claimant,⁶ and must be one of reasonable medical certainty,⁷ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.

ANALYSIS

The Office has accepted that the October 26, 2007 motor vehicle accident occurred as alleged. The issue to resolve is whether appellant has established a causal relationship between the employment incident and a diagnosed condition. This issue must be resolved with rationalized medical evidence.

Dr. Bayner's November 2 and 9, 2007 reports failed to provide confirmation of any diagnosis or an opinion as to the cause of her complaints and disability. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸

Drs. Birrer and Vosough noted that appellant had been involved in a work accident on October 26, 2007. However, there is no indication that either physician had an accurate factual history of injury. It is well established that medical reports must be based on a complete and accurate factual and medical background and that medical opinions based on an incomplete or inaccurate history are of diminished probative value.⁹ Therefore the medical reports with an inaccurate factual history have no probative value to establish causal relationship. Additionally while both physicians opined the October 26, 2007 work injury resulted in appellant's current impairment and disability, their opinions carry little weight because no medical explanation of how the accepted employment incident caused or aggravated the diagnosed conditions is provided.¹⁰

Drs. Ibrahim and Massey noted a proper history of injury. Dr. Ibrahim diagnosed lumbosacral paraspinal muscle spasm and lumbar radiculopathy. Dr. Massey diagnosed disc herniations at C3-4 and C4-5 and disc bulge at L5-S1. While both physicians opined that the diagnosed conditions and resultant disability were the result of the October 26, 2007 work incident, neither physician offered a rationalized medical explanation of how the employment event caused or aggravated the diagnosed conditions.¹¹ Thus, these reports are insufficient to establish appellant's claim.

⁶ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *John W. Montoya*, 54 ECAB 306 (2003).

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *James R. Taylor*, 56 ECAB 537 (2005).

¹⁰ *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

¹¹ *Id.*

The remainder of the evidence in the record also fails to establish appellant's claim. The diagnostic and musculoskeletal testing along with Dr. Birrer's November 5, 2007 prescription note contained neither a diagnosis nor an explanation of the cause of appellant's disability. Additionally, while appellant also submitted physical therapy notes and pain management surgical notes signed by a physical therapist and a registered physician's assistant, it is well established that physical therapists and registered physician's assistant are not a physician as defined under the Act. This material does not constitute probative medical evidence.¹²

Appellant expressed her belief that her alleged neck and back conditions resulted from the October 26, 2007 employment incident. However, 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.¹³ Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹⁴ Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit.

Because appellant has not submitted adequate medical evidence, the Board finds that she has not met her burden of proof to establish a causal relationship between her accepted employment event and her diagnosed conditions.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on October 26, 2007 as alleged.

¹² A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: 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, 575 (1988).

¹³ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 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