

FACTUAL HISTORY

This case is before the Board for the fourth time. In a decision dated September 6, 2000, the Board affirmed February 29 and May 29, 1998 decisions finding that appellant was not entitled to compensation after June 22, 1997 due to her accepted work injuries of cervical strain, right shoulder strain and right hip strain.² By decision dated July 21, 2004, the Board affirmed the Office's June 5, 2003 decision denying modification of its finding that she had no disability after June 22, 1997 and a December 16, 2003 decision denying her request for reconsideration under section 8128.³ On February 17, 2006 the Board affirmed a June 1, 2005 decision denying appellant's request for a hearing and a September 29, 2005 decision denying merit review under section 8128.⁴ The findings of fact and conclusions of law from the prior decisions are hereby incorporated by reference.

On May 9, 2008 appellant requested reconsideration.⁵ By letter dated May 12, 2008, her attorney asserted that she continued to experience pain due to her work injury. Counsel submitted a magnetic resonance imaging (MRI) scan study of appellant's left knee dated November 9, 2007, an MRI scan study of the right shoulder dated May 4, 2008, an April 16, 2008 operative report of a left knee arthroscopy and physical therapy reports from 1995 to the present. On May 27, 2008 he provided treatment notes dated 1997 to 2009 from Dr. M. Dennis Wachs, an attending Board-certified orthopedic surgeon and pain management reports dated 1999 to 2008 from Dr. S. Asim Razvi, a Board-certified anesthesiologist.

In a report dated June 3, 2008, Dr. Razvi related that he had treated appellant for low back pain since July 1999. He stated, "At that time [she] presented to me with low back pain that she states started after she had a slip and fall while delivering mail on some ice in a driveway in 1994. [Appellant] says that[,] since the time of the fall, the pain has been present and has gotten progressively worse to the time she saw me back in 1999." Dr. Razvi noted that an MRI scan study showed a disc bulge with some impingement on the right at L5-S1. He asserted that as appellant had no back pain prior to the fall, it was "highly likely that the current back pain that [appellant] is experiencing was caused by her slip and fall on the ice in 1994. [Appellant] is suffering from ongoing disability."

On August 4, 2008 Dr. Wachs described his treatment of appellant beginning January 25, 1994 after she slipped and fell on ice on January 19, 1994. He noted that, at the time of his

² Docket No. 98-2432 (issued September 6, 2000). The Office accepted that appellant sustained cervical strain, right shoulder strain and right hip strain when she fell on ice on January 19, 1994. The Board found that the Office met its burden of proof to terminate her compensation effective June 22, 1997 based on its finding that the opinion of Dr. Gerald M. DeBonis, a Board-certified orthopedic surgeon and Office referral physician, represented the weight of the medical evidence.

³ Docket No. 04-630 (issued July 21, 2004).

⁴ 57 ECAB 441 (2006). On May 16, 2007 the Board denied appellant's petition for reconsideration. Order Denying Petition for Reconsideration, (Docket No. 06-75, issued May 16, 2007).

⁵ Appellant's request for reconsideration was untimely as it was made more than one year after the last merit decision. The Office, however, within its discretion, treated her request as timely and reopened her case. *See* 5 U.S.C. § 8128(a).

initial evaluation on January 25, 1994, appellant complained initially of pain in the right shoulder and hip. Dr. Wachs stated, “[Appellant’s] problems persisted in multiple areas, the shoulder, the right hip, the left knee and ultimately the back. Her further treatments revealed that indeed the back was, to my understanding, injured at the time of this torsional injury and it ultimately resulted in the diagnosis being made of a disc rupture at L5-S1.”

Dr. Wachs noted that a left knee arthroscopy obtained April 16, 2008 revealed degenerative changes due to her torsional injury. An MRI scan study of the cervical spine in March 2008 showed severe spinal stenosis at multiple levels and a February 2008 MRI scan study of the lumbar spine showed L4-5 bilateral facet hypertrophic changes and a small disc bulge, bilateral facet changes at L3-4 with some mild redundancy of the ligamentum flavum and L5-S1 degenerative changes and mild bilateral facet hypertrophic changes. Dr. Wachs concluded:

“In summary, [appellant] had a slip on ice resulting in a torsional fall which had the immediate effect of pain in her right shoulder, right hip and left leg, left thigh and left knee. She has been disabled for work since then with treatment of the various difficulties that I have recounted that are related to her torsional injury, namely her right shoulder, right hip, left knee, lower back and neck.”

By decision dated August 8, 2008, the Office denied modification of its finding that appellant failed to establish that she had employment-related disability after June 22, 1997.⁶

LEGAL PRECEDENT

Once the Office meets its burden of proof to terminate appellant’s compensation benefits, the burden shifts to appellant to establish that she has continuing disability causally related to her accepted employment injury.⁷ To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background, supporting such a causal relationship.⁸ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁹ Rationalized medical evidence is 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 rationalize explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰ Neither

⁶ As previously noted, the Office asserted that it was denying appellant’s request for reconsideration under section 8128 but weighed the evidence submitted and thus reviewed the merits of her claim.

⁷ *Manual Gill*, 52 ECAB 282 (2001).

⁸ *Id.*

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Michael S. Mina*, 57 ECAB 379 (2006); *Leslie C. Moore*, 52 ECAB 132 (2000).

the 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.¹¹

ANALYSIS

The Office terminated appellant's compensation effective June 22, 1997 based on its finding that she had no further disability due to her accepted conditions of cervical strain, right shoulder strain and right hip strain. By decisions dated September 6, 2000 and July 21, 2004, the Board affirmed the Office's finding that she had no further disability after June 22, 1997 causally related to her January 19, 1994 employment injury. On February 17, 2006 the Board affirmed a June 1, 2005 decision denying appellant's request for a hearing and a September 29, 2005 decision denying her request for reconsideration under section 8128.

On May 9, 2008 appellant requested reconsideration. She submitted physical therapy reports from 1994 to 2008. A physical therapist, however, is not a physician within the meaning of the Act and thus not competent to provide a medical opinion.¹²

Appellant further submitted progress reports from Dr. Razvi dated 1999 through 2008 and treatment notes from Dr. Wachs dated 1997 through 2008. Neither physician, however, addressed the pertinent issue of whether appellant had any continuing disability after June 22, 1997 causally related to her employment injury and thus these reports are of little probative value.

On June 3, 2008 Dr. Razvi indicated that he had treated appellant since July 1999 for low back pain. He diagnosed a disc bulge with right L5-S1 impingement. Dr. Razvi found that it was "highly likely" that her current back pain was due to her 1994 fall on ice and indicated that she had "ongoing disability." His opinion that it was "highly likely" that appellant's back pain was due to her employment injury is couched in speculative terms and thus of diminished probative value.¹³ Additionally, the Office did not accept her claim for a low back condition. Where appellant claims that a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.¹⁴ As Dr. Razvi's opinion is speculative and unsupported by medical rationale, it is insufficient to meet her burden of proof.¹⁵

In a report dated August 4, 2008, Dr. Wachs reviewed his treatment of appellant for problems with her right shoulder, right hip, left leg, left thigh, left knee and back due to her

¹¹ *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹² 5 U.S.C. § 8101(2); A.C., 60 ECAB ____ (Docket No. 08-1453, issued November 18, 2008).

¹³ *Id.*

¹⁴ *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

¹⁵ *See Beverly A. Spencer*, 55 ECAB 501 (2004).

torsional fall on January 19, 1994. He related that her slip and fall on the ice immediately caused pain in her right shoulder, right hip, left leg and left knee. Dr. Wachs found that appellant also experienced a disc injury to her lower back causally related to her January 19, 1994 slip and fall. He further found degenerative changes in the left knee due to work injury and cervical stenosis due to degenerative changes. Dr. Wachs asserted that she was disabled from work as of January 19, 1994 due to injuries in her right shoulder, right hip, left knee, lower back and neck as a result of her employment injury. He did not, however, explain why the January 19, 1994 injury, accepted by the Office for cervical strain, right shoulder strain and right hip strain, continued to cause disability after June 22, 1997. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹⁶ Further, as previously noted, the Office did not accept a low back condition or degenerative changes of the left knee and cervical spine as employment related and thus it is appellant's burden to show that the conditions are employment related by submitting rationalized medical evidence.¹⁷ Dr. Wachs did not provide sufficient rationale for his opinion that the January 19, 1994 employment injury caused a low back or degenerative condition and thus his opinion is of little probative value.¹⁸

Appellant has not met her burden of proof to establish that she had any further employment-related disability after June 22, 1997; consequently, the Office properly denied her claim.

CONCLUSION

The Board finds appellant has not established that she had continuing disability after June 22, 1997 due to her January 19, 1994 work injury.

¹⁶ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹⁷ *See Jaja K. Asaramo*, *supra* note 14.

¹⁸ *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmy H. Duckett*, 52 ECAB 332 (2001).

ORDER

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

Issued: June 16, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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