

**United States Department of Labor
Employees' Compensation Appeals Board**

C.S., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS HEALTH ADMINISTRATION,)
Bedford, MA, Employer)

Docket No. 09-703
Issued: October 6, 2009

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On January 14, 2009 appellant filed a timely appeal from August 25 and November 18, 2008 merit decisions of the Office of Workers' Compensation Programs denying her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty causally related to her federal employment. On appeal, appellant argues that her employment duties and prior injuries caused her current back condition.

FACTUAL HISTORY

On June 12, 2008 appellant, a 55-year-old nurse, filed an occupational disease claim (Form CA-2) for a back condition. She alleged that she experienced a lot of stress in her back as well as back spasms which she attributed to standing for long periods of time in one spot while

dispensing medications. Appellant realized her back condition was caused by her federal employment on May 9, 2008. She stopped work on May 12, 2008.

Appellant submitted a report dated May 19, 2008, signed by Dr. Atul L. Bhat, Board-certified physiatrist, which noted that appellant indicated that she experienced symptoms of “left low back/posterior buttock discomfort” that began to radiate along her left anterolateral thigh “sometime 10 days ago spontaneously without any acute event or trauma.” Dr. Bhat also noted that appellant believed that her condition may have been caused by standing for prolonged durations at work. Physical examination revealed multiple areas exhibiting significant tenderness to palpation along the left paralumbar region in the general vicinity of the highest iliac crest as well as along the left greater trochanter and left piriformis. An MRI scan revealed no evidence of abnormality such as a compression fracture or disc herniation but did reveal fluid in the right and left joint of the L4-5 segment. Dr. Bhat reported that he would arrange for appellant to undergo a single left L4-5 facet lumbar joint injection.

In a report dated June 13, 2008, Dr. Bhat reported that appellant was “nontender” to direct palpation along the thoracolumbar paraspinal muscles. Physical examination revealed significant tenderness along the left trochanteric region and mild tenderness in the left piriformis. Dr. Bhat noted that appellant continued to experience significant resolution of her distal lumbar pain stemming from her facet joints at the L4-5 level following a facet joint injection. He also noted that appellant continued to experience persistent left lateral thigh pain more consistent with left greater trochanteric bursitis.

By decision dated August 25, 2008, the Office denied appellant’s claim because the evidence of record was insufficient to establish that she sustained an injury as defined by the Federal Employees’ Compensation Act. While the Office accepted that appellant’s federal employment involved periods of prolonged standing, it found that the medical evidence was insufficient because it lacked a diagnosis of an injury.

On September 18, 2008 appellant requested reconsideration.

Appellant submitted a report dated September 3, 2008, in which Dr. Bhat diagnosed lower back pain, facet syndrome and lumbar degenerative disc disorder. In response to the question of whether these conditions were related to her employment, Dr. Bhat checked the box “unknown.” He noted that he instructed appellant to return to work in a light-duty capacity and to a sedentary position on June 13, 2008.

Appellant submitted a May 12, 2008 note signed by Dr. Paul P. Harcourt, Board-certified in family medicine, excusing appellant from work “due to a back and leg problem.” In a report also dated May 12, 2008, Dr. Harcourt reported findings upon examination and diagnosed appellant with herniated disc syndrome as well as radiculopathy.

In a report dated May 18, 2008, Dr. Michael Ruhoy, a Board-certified diagnostic radiologist, reported that an MRI scan of the lumbosacral spine revealed mild to moderate multilevel degenerative disc disease and facet arthritis which was causing multilevel neural foraminal narrowing at multiple levels. He noted that the most prominent foramen was at the

L4-5 level, which evidenced degenerative changes and further encroachment on the left L4 nerve root.

By decision dated November 18, 2008, the Office denied modification of its August 25, 2008 decision. It accepted that appellant's duties as a nurse required long periods of standing while dispensing medications and found that the evidence of record established the existence of medically-diagnosed conditions. The Office found that the evidence appellant submitted was insufficient to establish the existence of a causal relationship between the diagnosed conditions and the identified employment factor.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹

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.²

ANALYSIS

Appellant identified long periods of standing while dispensing medication as the employment factor that caused her back condition.³ Her burden was to establish, through production of probative rationalized medical evidence, that her alleged back condition was

¹ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

² *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

³ Appellant submitted evidence pertaining to traumatic injury claims (Form CA-1) she filed in 1991 and 1996. Her current claim is for an occupational disease (Form CA-2) not recurrence of disability or medical condition (Form CA-2a) and therefore, as this evidence concerned incidents and injuries arising under prior unrelated claims it has no evidentiary value on the issue of causal relationship.

caused by the identified employment factor.⁴ Appellant has not met her burden of proof and therefore the Office properly denied appellant's claim.

The relevant medical evidence of record consisted of reports from Drs. Bhat, Harcourt and Ruhoy.⁵ Dr. Bhat's May 19 and June 13, 2008 reports lack an opinion on the causal relationship between a compensable diagnosed condition and the identified employment factor.⁶ These reports concerned treatment for thigh and soft tissue pain. Pain is a symptom, not a compensable medical diagnosis.⁷ In neither report did Dr. Bhat address whether appellant's condition was caused or aggravated by her federal employment. While Dr. Bhat reported that appellant believed her condition may have been caused by prolonged standing at work, he was merely repeating appellant's subjective complaints and provided no objective medical rationale supporting this conclusion.⁸ These deficiencies reduce the probative value of these reports and, as such, they are insufficient to satisfy appellant's burden of proof.

Dr. Bhat's September 3, 2008 report is of little probative value as it lacks a rationalized opinion on causal relationship. He diagnosed lower back pain, facet syndrome and lumbar degenerative disc disorder. In response to the question of whether appellant's condition was related to her employment, Dr. Bhat checked the box "unknown." An opinion on causal relationship consisting of merely checking a box on a form report, without further explanation or rationale, is of little probative value.⁹ Because Dr. Bhat provided no substantive explanation for his opinion concerning whether appellant's condition was related to appellant's employment, his September 3, 2008 report is of little probative value and therefore insufficient to satisfy appellant's burden.

⁴ Appellant submitted an article concerning safe patient handling which she argued "Reenforcing my position of injury on the job related to long periods of standing in one position." She also submitted articles on topics including back safety, occupational overuse syndrome and lower back pain. Articles such as newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents. *Richard Yadron*, 57 ECAB 207 (2005); *Eugene Butler*, 36 ECAB 393 (1984). As such, these articles are of no evidentiary value in establishing a causal relationship between appellant's back condition and her federal employment.

⁵ Appellant submitted reports and notes from a physician's assistant, a registered nurse, and a licensed practical nurse. 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). Thus these reports and notes are of no probative value.

⁶ *S.S.*, 59 ECAB ____ (Docket No. 07-579, issued January 14, 2008).

⁷ *C.F.*, 60 ECAB ____ (Docket No. 08-1102, issued October 10, 2008).

⁸ *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).

⁹ *See Alberta S. Williamson*, 47 ECAB 569 (1996).

Dr. Harcourt's May 12, 2008 report and Dr. Ruhoy's May 18, 2008 report lack an opinion on the causal relationship between the conditions they diagnosed and the identified employment factor. As such, they are of no probative value on the issue of causal relationship and are insufficient to satisfy appellant's burden.

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.¹⁰ Appellant must submit a physician's report which reviews the identified employment factors which she claimed caused her condition and, incorporating these identified factors together with findings upon examination and a review of appellant's medical history, explains how the identified employment factors caused or aggravated a diagnosed condition and presents a medical rationale in support of his or her opinion.¹¹ She did not submit sufficient probative medical evidence in support of her claim and therefore has not met her burden of proof.

CONCLUSION

The Board finds appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty causally related to her federal employment.

¹⁰ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹¹ *Robert Broome*, 55 ECAB 339 (2004).

ORDER

IT IS HEREBY ORDERED THAT the November 18 and August 25, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 6, 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