

In a note dated November 1, 2007, appellant reported that on October 30, 2007 between 2:00 pm and 2:30 pm, as she was getting out of her vehicle, she felt a burning pain in her right leg. She alleged that the pain got worse as she continued working and began to radiate into her lower back.

Appellant submitted¹ a November 7, 2007 report signed by Dr. James B. Billys, a Board-certified orthopedic surgeon, who diagnosed lumbar radiculopathy.

In a November 7, 2007 treatment report, Dr. Anthony Infante, a Board-certified orthopedic surgeon, noted a history as having pain down the anterior part of appellant's leg that happened every day with certain movements. He also noted that appellant "admits to no real physical trauma to the area." Dr. Infante reported that examination of the knee revealed no tenderness to palpation of the S1 joint bilaterally. He observed no tenderness in the right hip upon palpation and appellant exhibited full range of motion in her right knee. Dr. Infante did note that appellant had decreased deep tendon reflex in her right knee. He diagnosed a radicular type pathology pain within appellant's right hip area. Dr. Infante offered no opinion regarding the cause of appellant's diagnosed condition.

In a November 8, 2007 note, Brenda Falleck, appellant's supervisor, reported that on October 31, 2007 when appellant returned from completing her route she was limping. She noted that she and appellant joked about getting old. Ms. Falleck reported that appellant telephoned her on November 11, 2007, and reported that she had gone to see a doctor the previous evening because of pain in her right leg. Appellant told her that her doctor told her not to do any lifting for the week and that she needed to get an x-ray and possibly a magnetic resonance imaging (MRI) scan. Ms. Falleck reported that she alleged that she did not know her injury was employment related until her doctor told her there was a problem with a disc in her back caused by lifting at work.

Appellant submitted no additional evidence in support of her claim and by letter dated November 15, 2007, the Office notified her that the evidence of record was insufficient to establish that she sustained an injury on the date alleged. It noted that it did not accept pain as a secure medical diagnosis and requested she submit medical evidence in support of her claim.

In a report dated November 10, 2007, Dr. Lori K. Taylor, a radiologist, reported that an MRI scan of appellant's lumbar spine revealed moderate central disc extrusion at the L4-5 level with mild stenosis. The MRI scan also revealed an annular tear and moderate central disc extrusion at the L5-S1 level with mild central canal stenosis. Further, an MRI scan of appellant's right hip revealed no joint space narrowing, no dislocation, no evidence of avascular necrosis and no soft tissue abnormality or joint effusion.

By report dated December 5, 2007, Dr. Infante reported physical examination revealed tenderness to palpation of appellant's right lumbar paraspinal musculature. An MRI scan

¹ 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 form issued to appellant did not authorize either examination or treatment and was therefore not properly executed.

revealed a small slightly right sided disc herniation at L4-5 and L5-S1 levels that did encroach slightly on the right neuroforamina at these levels. Dr. Infante also noted the presence of some central stenosis. He diagnosed herniated nucleus pulposus (HNP) at L4-5 and L5-S1.

By decision dated December 21, 2007, the Office, accepted that the employment-related incident occurred but denied appellant's claim because the evidence of record did not demonstrate the claimed medical condition was related to the established work-related event.

Appellant disagreed and requested reconsideration. In a note dated January 25, 2008, she explained that she had difficulty getting appointments with her physicians and, for that reason, she had not been able to obtain and submit the required medical evidence.

Appellant submitted a December 20, 2007 report signed by Dr. Billys who reported that physical examination of her leg revealed no pain with range of motion of her knee or ankle. Dr. Billys reported that radiographs demonstrated a slight decrease in L5-S1 disc height. An MRI scan did show some desiccation in the L4-5 and L5-S1 disc, in what appeared to be a central disc herniation at L4-5. Dr. Billys noted that based on appellant's history, it was more likely that the disc herniation at L4-5 caused her leg symptoms, which had resolved.

The employing establishment offered appellant a modified light-duty position as a rural carrier. The offered position was an eight hour per tour job that did not require appellant to lift more than 10 pounds and involved activities that did not require bending, twisting or climbing.

Appellant submitted an October 31, 2007 report signed by Dr. George Cheeseman, III, Board-certified in family medicine, who noted a history of injury as she experienced pain down her right leg as she tried to get out of her vehicle while delivering mail. Dr. Cheeseman reported that examination revealed spasm in her right lumbar spine as well as limited range of motion secondary to pain. He diagnosed low back pain and muscle spasm. Dr. Cheeseman concluded, "I told [appellant] that since she got pain when she went to get out of the vehicle she should report this to her job because it sounds like work."

Appellant also submitted a November 1, 2007 report signed by Dr. James B. Ball, Jr., Board-certified diagnostic radiologist, who reported that an x-ray of her spine revealed mild degenerative disc space narrowing at the L4-5 level. Dr. Ball observed minimal scoliosis convex to the left apex at the L3 level. He observed no fracture or dislocation and mild degenerative disc space narrowing at L4-5. Dr. Ball also noted the presence of two metallic devices related to appellant's right pelvis consistent with prior surgery.

Appellant submitted a November 7, 2007 report signed by Dr. Infante who reported that examination revealed decreased deep tendon reflex in her right knee. Dr. Infante observed no tenderness in her right hip or to palpation of the SI joint. He observed no tenderness to palpation over the epitrochanteric region or of the distal femur. Dr. Infante noted that appellant presented with a radicular type pathology pain within her right thigh area.

By decision dated March 5, 2008, the Office denied modification of its prior decision, finding that none of the evidence of record contained a rationalized medical opinion that established the alleged injury was caused by appellant's exiting a postal vehicle.

Appellant disagreed and, in an August 3, 2008 note, she asserted that the Office's decision was incorrect in that she had never had a hip condition or surgery. She reported that the metallic devices detected by the MRI scan were surgical clamps from a prior appendix surgery. Given the inaccuracies in the medical evidence and its decision, appellant requested permission to see another doctor.

By note dated June 12, 2008, Dr. Billys asserted that the Office's decision was incorrect as the findings in Dr. Ball's November 1, 2007 report concerning the two metallic implants was inaccurate. Moreover, he noted that appellant had never had any right hip symptoms, had never had surgery on her hip and therefore had no preexisting hip condition. Further, Dr. Billys stated that degenerative changes in a disc do not cause sciatica, rather they cause back pain and, further, that appellant had a history consistent with sciatica not back pain. He asserted that appellant had no prior complaints of sciatica involving her right leg; rather she developed these symptoms after her twisting injury. Dr. Billys opined that based on this and the MRI scan, which revealed disc herniations, her present condition was work related and not related to degenerative changes.

By decision dated August 20, 2008, the Office denied modification of its December 21, 2007 decision because the evidence of record did not establish her alleged injury was related to the established October 30, 2007 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ 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.⁴ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁵ 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.⁶

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 he or she actually experienced the employment

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *G.T.*, *supra* note 4; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

incident at the time, place and in the manner alleged.⁷ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

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.

ANALYSIS

Appellant identified an October 30, 2007 incident, when she was exiting her vehicle, as the employment-related incident that produced her right leg pain. The Office accepted that this employment-related incident occurred as alleged. Appellant's burden is to demonstrate, through the production of probative rationalized medical evidence, that her alleged personal injury is causally related to this identified employment-related incident. The Board finds the evidence of record insufficient to accomplish such a task as none of the evidence of record establishes the requisite causal relationship between her alleged injury and the identified employment incident.⁹

The relevant evidence of record consisted of reports from Drs. Ball, Billys, Cheeseman, Infante and Taylor. But these medical reports are of limited probative value as none of them contained a rationalized medical opinion concerning the causal relationship between appellant's injury and the identified employment incident. Medical reports that do not contain a rationale on causation are generally insufficient to meet an employee's burden of proof.¹⁰ The Board notes initially that Drs. Ball and Taylor are radiologists. Their reports reviewed appellant's MRI scans, but offered no history of injury or opinion regarding the cause of her condition.

While the reports from Drs. Infante, Cheeseman and Billys proffered findings upon examination and diagnoses, none of them proffered a rationalized opinion, based on a review of appellant's medical history and a contemporaneous physical examination, that the conditions they diagnosed were causally related to the October 30, 2007 employing establishment incident. Dr. Infante's reports merely repeated appellant's own history of injury but offered no opinion of

⁷ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁸ *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁹ *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).

¹⁰ *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (stating that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

his own regarding the medical cause of her condition. Causal relationship is a medical issue. Rationalized medical opinion evidence 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.¹¹

While Dr. Cheeseman related that he had told appellant to report her injury to the employing establishment “because it sounds like work,” his opinion is speculative at best and does not provide the necessary medical rationale explaining the nature of the relationship between her diagnosed condition and her work incident. Similarly Dr. Billys concluded that appellant’s present condition was work related, but offered no medical rationale explaining how the accepted incident would have caused the diagnoses.

As none of these physicians proffered a rationalized opinion concerning how or if appellant’s injury was caused by the identified October 30, 2007 employment incident, they are of limited probative value and are insufficient to meet her 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 his condition was aggravated by her employment is sufficient to establish causal relationship.¹² The Board has held that the fact that a condition manifests itself or worsens during a period of employment¹³ or that work activities produce symptoms revelatory of an underlying condition¹⁴ does not raise an inference of causal relationship between a claimed condition and employment factors.

The Office advised appellant that it was her responsibility to submit a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor’s opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to its request. As there is no probative rationalized medical evidence addressing how her alleged injury was caused by the identified employment incident, she has not met her burden of proof to establish that she sustained an injury in the performance of duty on October 30, 2007.

CONCLUSION

The Board finds appellant has not established that she sustained an injury in the performance of duty on October 30, 2007.

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

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

¹³ *E.A.*, 58 ECAB ___ (Docket No. 07-1145, issued September 7, 2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

¹⁴ *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

ORDER

IT IS HEREBY ORDERED THAT the August 20 and March 5, 2008 and December 21, 2007 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: September 2, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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