

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

V.M., Appellant)

and)

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Hines, IL, Employer**)

**Docket No. 09-620
Issued: September 17, 2009**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 2, 2009 appellant filed a timely appeal from May 21 and November 18, 2008 decisions of the Office of Workers' Compensation Programs, denying her claim for a traumatic injury on December 20, 2007. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a back injury on December 20, 2007 while in the performance of duty.

FACTUAL HISTORY

On February 19, 2008 appellant, then a 37-year-old transportation clerk, filed a traumatic injury claim alleging that on December 20, 2007 she injured her back due to constant turning and reaching across her desk and leaning forward. An employing establishment accident report dated February 19, 2008 indicated that she alleged a back injury on December 20, 2007. Appellant

alleged that on January 9, 2008 she injured her back again when she turned the wrong way to answer the telephone and felt a sharp pain in her back. The record shows that she was a probationary employee who began her job at the employing establishment in May 2007.

In a March 13, 2008 memorandum, Joseph Rio, appellant's supervisor, stated that she used sick leave on December 5, 13, 27 and 28, 2007. Appellant never informed management that she sustained a work-related injury on December 20, 2007 and did not take leave on that day. Mr. Rio noted that, on February 8, 2008, shortly before appellant filed her claim for a back injury on December 20, 2007, she was given a written and verbal warning regarding excessive use of sick leave. He noted that appellant had a military service-related disability rating of 10 percent for chronic low back problems.

On March 14, 2008 Dr. Chandra S. Mouli, a radiologist, stated that a magnetic resonance imaging (MRI) scan of appellant's lower back was normal.

By letter dated April 10, 2008, the Office asked appellant to submit additional factual evidence establishing that the claimed incident on December 20, 2007 occurred as alleged. It also requested medical evidence establishing causal relationship between the work incident and a diagnosed medical condition.

An April 4, 2008 functional capacity evaluation report from a physical therapist provided a history that appellant injured her back in December 2007 when she turned in her chair to answer the telephone, then turned back and felt a pop in her back.

In an April 7, 2008 form report, Dr. David Weiss, a physiatrist, stated that appellant had a history of intermittent low back pain since 1990. In December 2007, appellant turned while at work and felt a pop in her back. Since that time her pain had increased. Dr. Weiss provided findings on physical examination and diagnosed low back pain that he believed was muscular in origin.

On April 17, 2008 appellant explained that she did not submit her claim form within 30 days of the December 20, 2007 work incident because she was not told by the employing establishment to submit a claim form. She contended that her supervisor was supposed to "initiate" the claim.

By decision dated May 21, 2008, the Office denied appellant's claim on the grounds that the evidence did not establish that the December 20, 2007 work incident occurred as alleged and the medical evidence did not establish a work-related medical condition.¹

Appellant requested a telephonic hearing that was held on September 11, 2008. She failed to participate in the hearing. The hearing representative advised her attorney that the record would be held open for 30 days for the submission of additional evidence.

¹ The December 20, 2007 work incident occurred as alleged in its May 21, 2008 decision.

By decision dated November 18, 2008, an Office hearing representative affirmed the May 21, 2008 decision on the grounds that the medical evidence failed to establish that appellant sustained a work-related back injury on December 20, 2007.

LEGAL PRECEDENT

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 incident at the time, place and in the manner alleged.² Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.

To establish a causal relationship between an employee's condition and any disability claimed and the employment event or incident, he or she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of 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 claimant.⁴

ANALYSIS

The Board finds that the evidence is insufficient to establish that appellant sustained a back injury on December 20, 2007 while in the performance of duty.

Appellant alleged that on December 20, 2007 she injured her back due to constant turning and reaching across her desk and leaning forward. She alleged that she again injured her back on January 9, 2008 when she turned to answer the telephone. A March 14, 2008 MRI scan was reported as normal.

An April 4, 2008 functional capacity evaluation report from a physical therapist provided a history that appellant injured her back in December 2007 when she turned in her chair to answer the telephone. A physical therapist does not qualify as a physician under the Federal

² *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

³ *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁴ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Employees' Compensation Act.⁵ Registered nurses, licensed practical nurses, physician's assistants and physical therapists are not physicians as defined under the Act and their opinions are of no probative value.⁶ Consequently, the physical therapist's report is not sufficient to establish that appellant sustained a work-related back injury on December 20, 2007.

In an April 7, 2008 form report, Dr. Weiss provided a history that in December 2007 appellant turned while at work and felt a pop in her back. Since that time appellant's pain had increased. Dr. Weiss noted that appellant had a history of intermittent low back pain since 1990. He provided findings on physical examination and diagnosed low back pain that he believed was muscular in origin. However, back pain is not a diagnosis. Dr. Weiss opined that the back condition was muscular in origin but did not provide a specific diagnosis. He did not provide medical rationale explaining how appellant's low back problem was causally related to the December 20, 2007 work incident. Dr. Weiss did not provide a medical history addressing any preexisting condition or prior treatment of her low back. Thorough medical rationale is necessary in light of the fact that appellant had a long-standing history of low back pain. Such rationale is also important because Dr. Weiss did not examine her until several months after the December 20, 2007 work incident. For these reasons, the report of Dr. Weiss is not sufficient to establish that appellant sustained a work-related back injury on December 20, 2007.

There is no medical evidence of record containing a complete and accurate factual and medical background, physical findings on examination and medical rationale explaining how appellant's back condition was causally related to the December 20, 2007 incident at work. Therefore, the Office properly denied her claim.

On appeal, appellant contends that the May 21 and November 18, 2008 decisions are contrary to fact and law. However, she failed to identify any specific errors in the Office's decisions. Appellant's assertion is without merit.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury on December 20, 2007 while in the performance of duty.

⁵ See 5 U.S.C. § 8101(2) which provides: "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law"; see also *Roy L. Humphrey*, 57 ECAB 238 (2005); *Jennifer L. Sharp*, 48 ECAB 209 (1996).

⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 18 and May 21, 2008 are affirmed.

Issued: September 17, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board