

FACTUAL HISTORY

On March 23, 2006 appellant, then a 50-year-old medical assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2006 she sustained a neck injury after reaching for a pencil and retrieving documents from a file on the floor.¹

On March 21, 2006 appellant was treated in the emergency room at St. Mary's Hospital. She was given pain medication and a magnetic resonance imaging (MRI) scan revealed that she had a herniated disc. Appellant was discharged that same day and was referred to Dr. Brett Men-Muir, a Board-certified orthopedic surgeon, who scheduled her for surgery for "Fusion of C5-6/Implant C5-6" on April 5, 2006.

The employing establishment signed an authorization for examination and/or treatment (Form CA-16) for St. Mary's Hospital and for Dr. Men-Muir to provide appellant with medical services for neck pain and treatment for a period of up to 60 days. The date of injury was listed as March 21, 2006. Dr. Men-Muir noted that appellant injured herself lifting a pencil off of the floor on March 21, 2006. He completed the attending physician's report portion of the form on May 1, 2006 diagnosing herniated nucleus pulposus at C5-6. Dr. Men-Muir indicated, as requested, with an affirmative check mark that the condition found was caused or aggravated by the employment incident.

On May 8, 2006 the Office requested additional factual and medical information from appellant. It found that the evidence submitted was insufficient to establish an employment-related cervical condition. The Office allotted appellant 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a narrative response to the inquiries, a series of reports from Dr. Men-Muir dated between February and May 2006 and an operative report of April 5, 2006. In a May 24, 2006 report, Dr. Men-Muir responded to the Office's request for a medical explanation of how the incident in her federal employment contributed to appellant's condition. He reported:

"[Appellant] has not described any gross condition in my notes that I can see that is related to her current condition of neck pain which necessitated an anterior cervical discectomy fusion at C5[-]6. The condition that I see in [appellant's] neck is degenerative in nature and this has occurred over a long period of time, just not one event."

Dr. Men-Muir noted that appellant had a stable prognosis and, although she continued to complain of neck pain, it was his medical opinion that "her current status is temporary, not permanent," and she could go back to unrestricted work after six weeks.

¹ On March 23, 2006 appellant also filed a notice of occupational disease (Form CA-2) alleging that she sustained a "Herniated disc of c spine (C5-C6)" while lifting boxes at work in October 2004 but did not become aware of the employment relationship until March 21, 2006. The Office did not issue a final decision on the occupational disease claim; therefore, this issue is not properly before the Board on appeal. 20 C.F.R. § 501.2(c).

By decision dated July 13, 2006, the Office denied appellant's claim finding that the medical evidence was insufficient to establish that her cervical condition was due to her federal employment.

On August 3, 2006 appellant filed a request for reconsideration and submitted new evidence in support thereof.

By decision dated October 31, 2006, the Office modified the July 13, 2006 decision to find that the March 21, 2006 incident occurred as alleged. It affirmed the previous denial of the claim, finding that appellant did not establish that her medical condition was causally related to the employment incident.

On October 14, 2009 appellant requested reconsideration and submitted a February 16, 2005 report by Dr. Michael F. Fry, a Board-certified orthopedic surgeon, who stated that she "was helping plant the yard in May 2004 and admittedly had overdone it. She started getting neck pain that progressed to burning in her neck and down her right arm and into her back." In a March 8, 2005 report, Dr. Fry confirmed that appellant "aggravated her neck when she was in the process of working in the yard in May 2004." In a March 21, 2005 report, he reiterated that she "was helping to move some plants in the backyard," but that she wanted him "to amend that note in that she had to move file boxes at work" because that is when the pain began to bother her the most.

A February 10, 2006 report by Dr. Men-Muir, advised that appellant reported right shoulder and right hip injuries, as well as back pain, from a work incident on May 5, 2004. He noted that she had been previously seen by Dr. Fry on March 10, 2004.

In an April 11, 2006 report, Dr. Richard W. Blakey, a Board-certified orthopedic surgeon, confirmed that appellant reported injury to the right shoulder, right hip and back pain from a May 5, 2004 incident at work and that she previously saw Dr. Fry on March 10, 2004.

On May 9, 2006 Sharon L. Shane, a family nurse practitioner, reported that appellant stated, "her pain started around September-October, 2004" after lifting boxes at work. She noted that on March 21, 2006 appellant was unable to move her head. Appellant was diagnosed with a protruding disc and had surgery on April 5, 2006 after which her pain worsened.

A May 18, 2007 report by Dr. Diane Pond, Board-certified in pain medicine and the employing establishment's pain clinic director, stated that appellant reported a "sudden onset of neck pain while lifting boxes overhead at work in 2004."

Appellant submitted an August 6, 2007 narrative statement. She alleged that she did not have a medical problem with neck pain prior to September 23, 2004.

By decision dated January 15, 2010, the Office denied modification of the October 31, 2006 decision. It found that the medical evidence submitted was insufficient to establish a causal relationship between appellant's alleged neck injury and her performance of specific federal work duties "on or about March 21, 2006."

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 timely filed within the applicable time limitation period of the Act and that an injury³ was sustained in the performance of duty, as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁶

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁷ As part of an employee's burden of proof, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relation. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

The Office has accepted that on March 21, 2006 appellant reached for a pencil from the floor while in the performance of duty. The Board finds, however, that she did not establish a

² 5 U.S.C. §§ 8101-8193.

³ The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁴ *Steven S. Saleh*, 55 ECAB 169 (2003).

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *T.H.*, 59 ECAB 388 (2008); *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *C.B.*, 60 ECAB ____ (Docket No. 08-1583, issued December 9, 2008). *See also Steven S. Saleh*, *supra* note 4.

⁸ *Id.* *See also James Mack*, 43 ECAB 321 (1991).

causal relationship between her neck condition, for which compensation is claimed and the accepted incident.

In a May 9, 2006 report, nurse practitioner Ms. Shane advised that appellant reported that her neck pain began approximately between September and October 2004 and that appellant had difficulty with head movement. The Board has held that nurse practitioners are not physicians as defined under the Act.⁹ Therefore, the report is not probative medical opinion evidence.¹⁰

In a February 10, 2006 report, Dr. Men-Muir indicated that appellant reported right shoulder and right hip injuries, as well as back pain, from a work incident on May 5, 2004. On the Authorization for Examination and/or Treatment CA-16 form, he reported that she injured herself lifting a pencil on March 21, 2006 and diagnosed a herniated nucleus pulposus at C5-6 on May 1, 2006. Dr. Men-Muir indicated that the condition found was caused or aggravated by the employment incident but did not provide any explanation for his conclusion as instructed by the form.¹¹ In a subsequent report he provided a contradictory medical opinion. In a May 24, 2006 report, Dr. Men-Muir reported that appellant did not describe “any gross condition” related to her neck pain that, in his medical opinion, was “degenerative in nature” and “occurred over a long period of time, just not one event.” He initially indicated that her neck condition was caused or aggravated by the work incident on March 21, 2006, but subsequently reported that her condition was degenerative in nature and did not occur during a single incident. The reports of Dr. Men-Muir do not adequately explain whether the incident accepted in this case was sufficient to aggravate appellant’s degenerative disease such as to produce a herniated cervical disc at C5-6. Appellant submitted insufficient medical opinion evidence on the issue of whether the accepted employment incident caused her neck condition.

Dr. Fry indicated that appellant was doing yard work in May 2004 and began experiencing neck pain. In a March 21, 2005 report, he noted that she wanted him to amend his medical report to indicate that she was injured at work because that is when the pain began to bother her the most. Dr. Fry did not directly address the accepted March 21, 2006 employment incident or its causal relationship to appellant’s cervical condition, therefore, the probative value of his report is diminished.

In an April 11, 2006 report, Dr. Blakey confirmed that appellant reported injury to the right shoulder, right hip and back pain from a May 5, 2004 incident at work. He did not address the March 21, 2006 employment incident. Therefore, the probative value of this report is diminished, as it does not provide a medical opinion on how the accepted employment incident is causally related to the alleged neck condition.

⁹ 5 U.S.C. § 8101(2).

¹⁰ *L.D.*, 59 ECAB 273 (2008); *Vicky L. Hannis*, 48 ECAB 538 (1997).

¹¹ *Cf. John J. Carlone*, *supra* note 6, where the Office did not apprise the physician, through the claimant, that an explanation as to causal relationship was needed on the attending physician’s form report. The Board set aside the Office’s decision and remanded for further development of the medical evidence by requesting the claimant’s physician to submit a rationalized medical opinion on whether the medial meniscus tear was causally related to the employment incident.

On a May 18, 2007 Dr. Pond similarly reported that appellant experience a “sudden onset of neck pain while lifting boxes overhead at work in 2004.” She did not directly address the accepted March 21, 2006 employment incident and, therefore, failed to provide a rationalized medical opinion on whether appellant’s neck condition is causally related to that employment incident.

As appellant did not submit rationalized medical evidence to support her allegation that she sustained a neck injury causally related to the March 21, 2006 incident, she failed to meet her burden of proof to establish her claim.

CONCLUSION

The Board finds that appellant has not submitted rationalized medical opinion evidence to establish that she sustained a traumatic injury in the performance of duty on March 21, 2006, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2010 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: December 6, 2010
Washington, DC

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

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

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