United States Department of Labor
Employees' Compensation Appeals Board

C.C., Appellant	)	
and	)	**Docket No. 10-979**
	)	**Issued: December 20, 2010**
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, Fairmont, WV, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 25, 2010 appellant filed a timely appeal from the October 13, 2009 merit decision of the Office of Workers' Compensation Programs denying her traumatic injury claim. 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 traumatic injury while in the performance of duty on September 23, 2008.

FACTUAL HISTORY

On September 26, 2008 appellant, then a 59-year-old criminal history examiner, filed a traumatic injury claim alleging that on September 23, 2008 she slipped on a wet floor in a hallway at work and caught herself before falling. She experienced pain all over, burning in her

limbs and back, nausea and headache.[1] After reporting the incident to her supervisor, appellant went to a hospital emergency room.

The record contains a September 24, 2008 hospital report from Dr. Khurshid Khan, an emergency room physician, who noted appellant's complaint that she had "pain all over" and diagnosed muscle spasm. A September 26, 2008 discharge summary also contained a diagnosis of muscle spasm.

Appellant was treated by Dr. Richard Vasicek, Board-certified in the field of family medicine. On October 6, 2008 Dr. Vasicek stated that he had seen her the previous Friday, when she fell at work, noting that she now had pain "all over, head to toe." He diagnosed back pain and muscle strain and prescribed a course of physical therapy. In an October 9, 2008 disability slip, Dr. Vasicek opined that appellant was unable to work from September 23 through October 13, 2008 "due to injury."

Appellant submitted notes and work excuses dated October 6 through 24, 2008 from James Demus, a physical therapist, who diagnosed lumbosacral sprain.

In a letter dated November 19, 2008, the Office informed appellant that the information and evidence submitted was insufficient to establish her claim. It advised her to provide additional factual and medical evidence regarding the circumstances of the claimed incident and a report from a physician containing a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

The record contains a September 25, 2008 injury report reflecting appellant's claim that she slipped on a water spot on the date in question. In a statement dated November 19, 2008, appellant described the details of the September 23, 2008 incident, noting that she "slipped on water and a sticky place" prior to the start of her 7:30 a.m. shift. After she "twisted herself," she went to her cubicle, reported the incident to her supervisor and completed an incident report. When appellant began to experience nausea and back pain, she went to the hospital emergency room. She had no problems with her back prior to the claimed incident.

In a September 25, 2008 report, Dr. Vasicek indicated that appellant had fallen at work and would be unable to work from September 25 through October 7, 2008. On October 6, 2008 he diagnosed back pain, muscular spasms and multiple myalgia. Dr. Vasicek stated that appellant had fallen at work a week earlier and was "aching from head to toe." He stated that he did n[o]t "know what to do with this." Dr. Vasicek provided work excuses which allowed for a gradual increase in the number of hours appellant was allowed to work. On November 29, 2008 he released her to return to 10-hour shifts as of December 1, 2008.

In a decision dated December 19, 2008, the Office denied appellant's claim. It accepted that the claimed event occurred, namely, that she slipped on September 23, 2008, began to fall

[1] Appellant's September 11, 1997 traumatic injury claim File No. xxxxxx575 was accepted for multiple contusions. In a decision dated February 14, 2005, the Board affirmed the Office's April 23, 2004 decision denying her claim for a recurrence of disability, in which she alleged an increase of pain in her back and right leg. Docket No. 04-2231, (issued February 14, 2005).

but caught herself on the way down. The Office found, however, that the medical evidence was insufficient to establish that appellant sustained an injury as a result of the accepted incident.

On January 16, 2009 appellant requested an oral hearing.

Appellant submitted additional reports from Dr. Vasicek for the period October 1, 2008 through June 26, 2009. On October 1, 2008 Dr. Vasicek stated that she had paresthesia and burning "from her neck down" after her fall. In an October 15, 2008 report, he diagnosed back and body pain and noted appellant's belief that she may have gout because of her back pain. On November 4, 2008 Dr. Vasicek stated that appellant was "still hurting head to toe" due to a fall on September 23, 2008 and diagnosed "post fall" and myalgia. On November 13, 2008 he diagnosed "myalgia slip fall," noting that appellant fell on September 23, 2008. On May 13, 2009 Dr. Vasicek reported that she had pain across the upper part of her body and had "nerve problems. He noted that appellant had never experienced these symptoms prior to the accepted incident. In a May 18, 2009 report, Dr. Vasicek reviewed the results of an April 2009 magnetic resonance imaging (MRI) scan, which showed a herniated disc. He indicated that symptoms of muscle strain and neck pain began after the September 23, 2008 fall. On June 15, 2009 Dr. Vasicek stated that appellant's symptoms began after she slipped at work on a wet floor, which caused her to do a split. In a June 26, 2009 report, he stated that her complaints began after the accepted incident. Noting that Dr. Vasicek had been treating appellant since 2004, he indicated that she had never complained of neck and back pain prior to September 23, 2008. He reiterated his herniated disc diagnosis.

The record contains September 23, 2008 hospital notes from Dr. Khan, who stated that appellant slipped on water and caught herself before falling. Appellant apparently felt "uncomfortable" and complained of pain all over. In notes dated September 25, 2008, Nanette C. Riley, a nurse practitioner, diagnosed back strain, noting that appellant slipped, did a split and did not fall down. The record contains October 15, 2008 physical therapy notes and an April 20, 2009 report of an MRI scan of the cervical spine.

At the June 17, 2009 hearing, appellant testified that she had never experience back pain prior to the September 23, 2008 incident. She indicated that she was scheduled for a neurological examination on July 7, 2009.

By decision dated August 5, 2009, the Office hearing representative affirmed the December 19, 2008 decision on the grounds that the medical evidence was insufficient to establish a causal relationship between a diagnosed condition and the accepted incident.

On September 16, 2009 appellant requested reconsideration.

Appellant submitted a July 27, 2009 report from Dr. Richard A. Douglas, a Board-certified neurological surgeon, who noted her complaints of cervical pain and burning sensation in her left arm and hand, as well as headaches and pain in her right ear. She informed him that these symptoms began following a work-related injury on September 23, 2008 when she slid on some water and caught herself. Examination revealed pain on range motion of the left shoulder. Deep tendon reflexes were 2+ and symmetrical throughout the upper and lower extremities with downgoing toes. An April 20, 2009 MRI scan of appellant's cervical spine revealed a central

disc herniation at C5-6 and a larger disc herniation at C6-7. Dr. Douglas diagnosed cervical and left arm pain and C5-6 and C6-7 disc herniation. He stated that he needed further studies to more clearly delineate nerve root compression.

On September 1, 2009 Dr. Douglas reported that appellant had intense pain in her left arm, with some mild right arm pain. He noted that she had a cardiac work-up for chest pain in 2007. On examination, motor strength was 5/5; deep tendon reflexes were 2- with downgoing toes. An August 3, 2009 MRI scan of the left shoulder revealed a normal rotator cuff. An August 3, 2009 MRI scan of the cervical spine revealed a central and right-sided disc herniation at C6-7 with left foraminal narrowing at C5-6. August 3, 2009 cervical spine x-rays showed minimal disc space narrowing. Dr. Douglas recommended a referral to pain management for possible C5 and C6 nerve root block.

In a decision dated October 13, 2009, the Office denied modification of the August 5, 2009 decision on the grounds that the medical evidence was insufficient to establish that the accepted incident had caused an injury.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[3]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of 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, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[5]

[2] 5 U.S.C. § 8102(a).

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Robert Broome*, 55 ECAB 339 (2004).

[5] *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Deborah L. Beatty*, 54 ECAB 340 (2003). *Betty J. Smith*, 54 ECAB 174 (2002). The term injury as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q)(ee).

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] Neither the mere 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 a causal relationship.[8] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[9]

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 that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[10]

ANALYSIS

The Office accepted that appellant was a federal employee that she timely filed her claim for compensation benefits and that the September 23, 2008 workplace incident occurred as alleged. The issue, therefore, is whether she has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

On September 25, 2008 Dr. Vasicek indicated that appellant had fallen at work and would be unable to work from September 25 through October 7, 2008. The report does not contain a definitive diagnosis, examination findings or an opinion on the cause of appellant's condition. Therefore, it is of limited probative value.[11]

On October 1, 2008 Dr. Vasicek stated that appellant had paresthesia and burning "from her neck down" after her fall. On October 6, 2008 he diagnosed back pain; muscular spasms;

[6] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[7] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[8] *Id.*

[9] 20 C.F.R. § 10.303(a).

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value. *C.B.*, 61 ECAB ___ (Docket No. 09-2027, issued May 12, 2010). *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009).

and multiple myalgia, noting that she had fallen at work a week earlier and was "aching from head to toe." On October 15, 2008 Dr. Vasicek diagnosed back and body pain. On October 9, 2008 he opined that appellant was unable to work from September 23 through October 13, 2008 "due to injury." On November 4, 2008 Dr. Vasicek stated that she was "still hurting head to toe" due to a fall on September 23, 2008 and diagnosed "post fall" and myalgia. On November 13, 2008 he diagnosed "myalgia slip fall," noting that appellant fell on September 23, 2008. Dr. Vasicek implied that her discomfort and pain were caused by the accepted fall. He did not, however, provide a definitive diagnosis. The Board has consistently held that a diagnosis of pain does not constitute a basis of payment for compensation, as pain is considered to be a symptom rather than a specific diagnosis.[12] Moreover, Dr. Vasicek failed to describe the incident or explain how it was competent to cause appellant's current condition. Without such rationale, his reports are of diminished probative value.[13]

On May 13, 2009 Dr. Vasicek reported that appellant had pain across the upper part of her body and had "nerve problems, which she had never experienced prior to the September 23, 2008 incident. In a May 18, 2009 report, he diagnosed a herniated disc pursuant to an April 2009 MRI scan and noted that her symptoms of muscle strain and neck pain began after the September 23, 2008 fall. On June 15, 2009 Dr. Vasicek stated that appellant's symptoms began after she slipped at work on a wet floor, which caused her to do a split. On June 26, 2009 he stated that he had been treating her since 2004 and that she had never complained of neck and back pain prior to September 23, 2008. Dr. Vasicek's reports do not provide a clear opinion as to the cause of appellant's condition. Rather, his opinion is vague and speculative. Dr. Vasicek suggested that appellant's diagnosed disc herniation and concomitant pain were due to the September 23, 2008 incident because she had no symptoms prior to the incident. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[14] Further, Dr. Vasicek did not provide a complete and accurate factual and medical background of appellant. His statement that she never complained of back pain prior to September 23, 2008 is inconsistent with the record in her prior claim. Most significantly, Dr. Vasicek did not explain the nature of the relationship between her diagnosed condition and the established incident, namely how doing a split on a wet floor, without falling, could result in a herniated disc.[15]

On July 27, 2009 Dr. Douglas noted that appellant reported that she had cervical pain and a burning sensation in her left arm and hand, as well as headaches and pain in her right ear following a work-related injury on September 23, 2008 when she slid on some water and caught herself. He provided examination findings and diagnosed cervical and left arm pain and C5-6 and C6-7 disc herniation. Dr. Douglas recommended further studies to more clearly delineate nerve root compression. On September 1, 2009 he reported that appellant had intense pain in her left arm, with some mild right arm pain. Dr. Douglas again provided examination findings and

[12] *C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008); *Robert Broom*, *supra* note 4.

[13] *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[14] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[15] *John W. Montoya*, 54 ECAB 306 (2003).

reviewed the results of an August 3, 2009 diagnostic test. An MRI scan of the left shoulder revealed a normal rotator cuff; an MRI scan of the cervical spine revealed a central and right-sided disc herniation at C6-7 with left foraminal narrowing at C5-6; cervical spine x-rays showed minimal disc space narrowing. Dr. Douglas' reports related the history of injury and subsequent symptoms as reported by appellant. They do not, however, contain his opinion on the cause of her diagnosed condition or any explanation as to how the accepted incident was competent to cause the diagnosed condition. Therefore, they are of limited probative value and are insufficient to establish appellant's claim.[16]

Appellant submitted notes and reports signed by a nurse practitioner and a physical therapist. Physical therapists and nurse practitioners do not qualify as "physicians" under the Act. Therefore, the Board finds that they do not constitute probative medical evidence.[17]

In hospital notes and reports from September 23 through 26, 2008, Dr. Khan stated that appellant slipped on water and caught herself before falling, noting that she felt "uncomfortable" and complained of pain all over. He did not provide a definitive diagnosis or an opinion as to the cause of appellant's condition. Therefore, Dr. Khan's reports are of limited probative value.[18] The remaining medical evidence of record, including reports of MRI scans, x-rays and other diagnostic tests, which do not contain an opinion on causal relationship, are also of limited probative value.

Appellant expressed her belief that her neck and back conditions resulted from the September 23, 2008 employment incident. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[19] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[20] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the work-related incident is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to

[16] *See C.B., supra* note 11. *See also S.E., supra* note 11.

[17] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[18] Similar to a diagnosis of pain, muscle spasms are a symptom of an underlying condition, rather than a specific diagnosis. *Robert Broom*, *supra* note 4.

[19] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[20] *Id.*

submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how her claimed neck or back condition was caused or aggravated by her employment, she has not met her burden of proof to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment.

On appeal, appellant's representative contends that appellant has established that she sustained an injury in the performance of duty. Alternatively, he argues that the medical evidence is sufficient to require further development. For reasons stated, the Board finds that the evidence is insufficient to establish that appellant sustained a traumatic injury in the performance of duty on September 23, 2008 or to require further development by the Office.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on September 23, 2008.

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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