United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 10-718**
	)	**Issued: November 3, 2010**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Leavenworth, KS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 25, 2010 appellant filed a timely appeal from the January 11, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury on July 15, 2009, as alleged.

FACTUAL HISTORY

On July 22, 2009 appellant, then a 52-year-old supervisory medical administrative program specialist, filed a traumatic injury claim alleging that on July 15, 2009 she sprained her back, right ankle and right shoulder while walking down a hallway at work. She noted that her left leg gave out and she started to fall. Appellant caught herself and did not stop work.

In a July 16, 2009 treatment note, a nurse indicated that on July 8, 2009 appellant noted that her left leg gave out and she grabbed a wall to keep from falling. A separate nurse's note dated July 16, 2009 listed the date of injury as July 15, 2009.

In a July 22, 2009 report, Dr. S.R. Reddy Katta, a Board-certified physiatrist, noted that he last saw appellant on June 15, 2009 for chronic cervical, thoracic and lumbosacral sprain and right ankle sprain from a fall sustained in October 2007. He related that appellant advised him that she lost her balance and almost fell two weeks' prior while at work on July 8, 2009. Dr. Katta examined appellant and diagnosed chronic lower back pain from degenerative joint disease and degenerative disc disease of the lumbar vertebrae with left lumbar radiculitis and increased discomfort since a fall at work on July 8, 2009. The Office also received physical therapy reports and nurses' notes dated July 27, 2009.

In a September 9, 2009 letter, the Office informed appellant of the evidence needed to support her claim.

The Office received a July 8, 2009 report from Dr. Chet H. Strehlow, a Board-certified family practitioner, who noted that appellant presented with a cough and shortness of breath. Dr Strehlow indicated that appellant was exposed to some remodeling debris while at work and developed a severe cough. He diagnosed probable allergic reaction with secondary bronchitis. In a July 16, 2009 treatment note, Dr. Strehlow noted that appellant related that, on July 15, 2009, while walking down a hallway, her left leg gave out and that she grabbed a handrail with her right shoulder and went partially to the ground. He diagnosed right shoulder strain, thoracic strain, left hip pain and right ankle sprain. In a treatment note dated July 27, 2009, Dr. Strehlow stated that appellant was going to physical therapy. He noted a film of her hip was unremarkable and that she could return to work without restrictions.

In a September 9, 2009 report, Dr. Katta noted that appellant had chronic low back pain from degenerative disc disease and degenerative joint disease of the lumbar vertebrae with left lumbar radiculitis with increased discomfort since a fall at work on July 8, 2009 with associated left trochanteric bursitis. He noted that an MRI scan showed multilevel degenerative disc disease without any herniation or spinal stenosis.

In an October 13, 2009 decision, the Office denied appellant's claim for compensation finding that she did not submit sufficient medical evidence to establish that her back condition was related to the work-related incident.

On October 18, 2009 appellant requested reconsideration. She submitted evidence from Dr. Strehlow and physical therapy notes. On August 19, 2009 Dr. Strehlow noted that appellant was in follow up for her right shoulder strain, thoracic spine strain, left hip pain and right ankle sprain. He advised that her right shoulder strain and right ankle sprain were unchanged, the thoracic spine strain and left hip pain was worsening but she could return to work without restrictions. In an October 6, 2009 treatment note, Dr. Strehlow advised that appellant's right shoulder strain and thoracic spine strain were unimproved. He indicated that appellant could return to full duty without restrictions.

In an October 13, 2009 report, Dr. Mark D. Strehlow, a Board-certified family practitioner and an associate of Dr. Chet Strehlow, noted that appellant had a history of prior industrial and nonindustrial injuries to similar parts of the body. On July 15, 2009 appellant was walking down the hallway and her left knee gave out, she grabbed a handrail with her right shoulder and went partially to the ground, which caused her right arm to be hyperextended above her head. Dr. Strehlow advised that appellant complained of right shoulder pain, mid-thoracic pain, left hip pain, and right ankle pain all mild to moderate. He indicated that no prior industrial or nonindustrial injuries to similar parts of the body were noted and she was diagnosed with right shoulder strain, thoracic spine strain, left hip strain and right ankle sprain. On July 27, 2009 appellant followed up for evaluation of her condition. Dr. Strehlow related that appellant indicated she had "one more slip in the hallway where she said her leg gave out and she had almost the exact same type of injury." He advised that she normally used a cane when she walked. Dr. Strehlow diagnosed right shoulder tendinitis, thoracic spine strain, continued; left hip pain, unresolved and worsening; and right ankle sprain, improved and noted that she had returned to work without restrictions at that time. He opined that appellant's diagnoses were related to the July 15, 2009 accident.

By decision dated January 11, 2010, the Office denied modification of its February 4, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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. 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.[5] 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.[6] The medical evidence

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyet*, 41 ECAB 992 (1990).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id*.

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.[7]

ANALYSIS

Appellant alleged that she sprained her back, right ankle and right shoulder when her left leg gave out while walking down a hallway at work on July 15, 2009. The Board finds that the claimed incident occurred as alleged; however, the medical evidence is insufficient to establish that the work incident caused an injury. The medical evidence contains no firm diagnosis, rationale or explanation of the mechanism of injury arising from the employment incident on July 15, 2009.[8]

Appellant provided reports dated July 22 and September 9, 2009, from Dr. Katta. He noted a fall at work in October 2007 and again on July 8, 2009. Dr. Katta diagnosed chronic lower back pain from degenerative joint disease and degenerative disc disease of lumbar vertebrae with left lumbar radiculitis and increased discomfort since the fall at work on July 8, 2009. The Board notes that the date of injury listed by Dr. Katta was incorrect. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of diminished probative value.[9] Dr. Katta did not explain how the July 15, 2009 incident at work caused or aggravated a diagnosed medical condition. He did not address appellant's prior injury cause of her condition.[10]

Appellant also submitted several reports from Dr. Chet Strehlow. In a July 16, 2009 treatment note, Dr. Strehlow advised that appellant related that on July 15, 2009, while walking down a hallway, her left leg gave out and that she grabbed a hand rail with her right shoulder and fell partially to the ground. He diagnosed right shoulder strain, thoracic strain, left hip pain and right ankle sprain. While Dr. Strehlow accurately noted the history of injury provided by appellant, he did not offer an opinion regarding the cause of appellant's condition. 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.[11] In treatment notes dated July 27 to

[7] *E.J.*, 61 ECAB ___ (Docket No. 09-1481, issued February 19, 2010).

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[9] *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[10] Matters regarding any prior injuries or other claims are not before the Board on the present appeal.

[11] *S.E.*, 60 ECAB __ (Docket No. 08-2214, issued May 6, 2009).

October 6, 2009, Dr. Strehlow listed appellant's status and indicated that she could return to work without restrictions. These brief medical notes did not offer an opinion regarding the cause of appellant's condition and are of limited probative value.

In an October 13, 2009 report, Dr. Mark Strehlow noted that appellant had a history of prior industrial and nonindustrial injuries to similar parts of the body. He subsequently advised that she had no history of industrial or nonindustrial injuries to similar parts of the body. Dr. Strehlow noted appellant's history of the incident at work and diagnosed right shoulder tendinitis, thoracic spine strain, continued; left hip pain, unresolved and worsening and right ankle sprain, improved. He stated that she had returned to work without restrictions. Dr. Strehlow opined that appellant's diagnoses were related to the July 15, 2009 incident. He did not sufficiently address how the accepted incident caused or aggravated appellant's condition. Without any reasoning to support the conclusion, Dr. Strehlow's opinion is insufficient to meet appellant's burden of proof.[12] His report initially noted that appellant had a history of similar prior industrial and nonindustrial injuries but then stated that she had no history of prior industrial and nonindustrial injuries. Dr. Strehlow was not clear regarding appellant's prior history of injury. As noted, medical opinions based on an incomplete or inaccurate history is of little probative value.[13] This is important as the record indicates that appellant has a history of previous injuries and conditions.

Appellant also provided several nurses' notes and physical therapy reports. Section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined under the Act is accorded probative value. Health care providers such as nurses and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute probative medical opinions.[14]

Other reports submitted by appellant did not address causal relationship.

Because the medical reports submitted by appellant do not sufficiently address how the July 15, 2009 incident caused or aggravated a lower and thoracic back, right ankle and right shoulder injury, these reports are of limited probative value and are insufficient to establish that the July 15, 2009 employment incident caused or aggravated a specific injury.

The Board notes that subsequent to the Office's January 11, 210 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal.[15]

[12] *See George Randolph Taylor*, *supra* note 8.

[13] *See supra* note 9.

[14] *Jane A. White*, 34 ECAB 515, 518 (1983). *See S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009); 5 U.S.C. § 8101(2).

[15] .20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

CONCLUSION

The Board finds that appellant 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.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 11, 2010 is affirmed.

Issued: November 3, 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