



## **FACTUAL HISTORY**

On November 14, 2008 appellant, then a 52-year-old food service worker, filed a traumatic injury claim alleging that on November 11, 2008 she was lifting supplies when she felt a pulling sensation in her buttocks, left hip and left leg.

In a November 13, 2008 report, Dr. Neil R. Scheier, an attending physician, noted that appellant presented with left side sciatic pain with gluteal involvement. She was transported to his office in a wheelchair by her two sisters. Appellant walked around the office with no problem. He noted that appellant had been working for weeks with left side sciatic pain. She performed lifting, pushing and pulling in her job but had no recall of the specific incident that caused her condition. Dr. Scheier provided findings on physical examination. Waist flexion was to 45 degrees at which point appellant noted left side sciatic pain. The spinous interspace was tender at L4-S1. Truncal rotation bilaterally was slightly limited secondary to effort. Quadriceps muscles were 4/5 on the left and 5/5 on the right with left movement pain against counterforce. Straight leg raising was vaguely positive at 60 degrees on the left. In reports dated November 26, 2008 to January 21, 2009, Dr. Scheier noted that appellant's sciatica was improving. On December 24, 2008 he released appellant to full duty. On January 21, 2009 Dr. Scheier noted that she was experiencing sciatica again and did not feel that she was able to work.

On January 15, 2009 Dr. Kevin Walter, a neurosurgeon, provided a history that appellant was kneeling at work on November 11, 2008 when she felt a pulling sensation in her left buttock and low back pain. Her condition had become progressively worse. Findings on physical examination were normal with the exception of lumbar flexion causing pulling down the left leg but no true radicular symptoms. A 2005 magnetic resonance imaging (MRI) scan was normal. There were no imaging studies of her lumbar spine. Dr. Walter noted that appellant's symptoms appeared to be improving spontaneously and she was able to return to work.

By letter dated February 9, 2009, the Office asked appellant for additional information, including a detailed description of the November 11, 2008 lifting incident and medical evidence containing a medical history, diagnosis and a rationalized explanation as to how the diagnosed condition was causally related to the November 11, 2008 incident.

On February 13, 2009 Casey Lamb, a supervisor, stated that on November 14, 2008 appellant presented a physician's note excusing her from work for two weeks.

On February 19, 2009 appellant stated that on November 11, 2008 she bent down to lift a case of Ensure weighing approximately 16 pounds. She felt a sharp pain with numbness in the left side of her lower back, left buttocks and leg as she turned to set the case down. Appellant self treated at home with pain medication, ice packs and a heating pad. She worked November 12 and 13, 2008 with pain and saw her physician after work on November 13, 2008. The physician placed appellant off work for two weeks. Appellant performed light-duty for four weeks and was released to full duty as of December 28, 2008. She continued to have pain and numbness and stopped work again on January 21, 2009.

On February 19, 2009 Dr. Scheier provided findings on physical evaluation and noted that appellant's severe sciatic pain had resolved but she had chronic low back pain with documented disc disease. Her low back pain flared at times when she performed lifting at work. Appellant could return to work in a light-duty capacity.

By decision dated March 19, 2009, the Office denied appellant's claim finding that the evidence did not establish that she sustained an injury on November 11, 2008 at the time, place and in the manner alleged.

On April 3, 2009 appellant requested a hearing that was held on July 8, 2009.

On March 20, 2009 Dr. Scheier provided findings on physical examination. He noted that appellant continued to have some left-sided sciatica but could perform light duty. In an undated report received on April 21, 2009, Dr. Scheier provided a "[c]larification of [November 13, 2008] initial presentation with sciatica." While she had been working with some back pain for weeks, she had an acute exacerbation on November 11, 2008 due to lifting pulling and pushing at work. Appellant did not seek treatment until November 13, 2008 because she hoped the pain would resolve. On April 24, 2009 he noted that appellant had chronic low back pain and was on light duty. On May 29, 2009 Dr. Scheier noted that she was awaiting a hearing. "She has it all calculated, tells me she can be on light duty for a full year." On July 28, 2009 he diagnosed low back pain and sciatica. Dr. Scheier noted that the employing establishment considered extending appellant's work hours but she could not handle this. She advised him that additional medical information was requested at her compensation hearing. Dr. Scheier reviewed appellant's chart but all information had been provided. She could continue light duty. On August 3, 2009 he noted that on November 13, 2008 appellant provided a history of several weeks of left-sided sciatic pain with gluteal involvement. On August 28, 2009 he noted that appellant was doing well with light duty. She was concerned about returning to regular duty and noted that a coworker had been on light duty for seven years.

In a statement received by the Office on July 24, 2009, Denise Mincer, appellant's immediate supervisor, noted that appellant did not report the November 11, 2008 lifting incident until November 14, 2008 because she did not want to be off work for a job-related injury. She provided appellant with light-duty work on November 12 and 13, 2008 because she complained of pain but appellant did not explain further.

In a decision dated September 24, 2009, the Office denied modification of the March 19, 2009 decision.<sup>1</sup>

### **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

---

<sup>1</sup> Subsequent to the September 24, 2009 Office decision, additional evidence was submitted to the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>2</sup> Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>3</sup> 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.<sup>4</sup>

### ANALYSIS

The Board finds that the evidence is insufficient to establish that appellant experienced the employment incident at the time, place and in the manner alleged. Appellant alleges that she sustained injury to the left side of her low back, left buttocks and leg when she lifted supplies on November 11, 2008. She self-treated with pain medication, ice packs and a heating pad at home and worked November 12 and 13, 2008. On November 13, 2008 Dr. Scheier noted that appellant had left-side sciatic pain with gluteal involvement. She was transported to his office in a wheelchair but later walked around the office with no problem. Dr. Scheier provided a history that she had been working for weeks with left sciatic pain. Appellant performed lifting, pushing and pulling in her job but had no recall of any specific incident that caused her condition. The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence.<sup>5</sup> The medical history provided by Dr. Scheier contradicts appellant's allegation that her injury occurred on November 11, 2008 while lifting a case of Ensure. On April 21, 2009 Dr. Scheier provided a "clarification" of appellant's initial presentation on November 13, 2008. While appellant had been working with some back pain for weeks, she had an acute exacerbation on November 11, 2008 due to lifting pulling and pushing at work. This clarification of the medical history was not provided until after the March 20, 2009 decision denying her claim. Dr. Scheier reported on November 13, 2008 that appellant recalled no specific incident as a cause of her condition and it was not until five months later that he mentioned a November 11, 2008 lifting, pulling and pushing incident. He did not confirm that

---

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

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

<sup>4</sup> *I.J.*, 59 ECAB \_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>5</sup> *See Katherine A. Williamson*, 33 ECAB 1696 (1982); *Arthur N. Meyers*, 23 ECAB 111 (1971).

she mentioned the November 11, 2008 incident to him on November 13, 2008. It is unexplained why she would fail to mention the November 11, 2008 incident when she sought treatment two days later on November 13, 2008. On August 3, 2009, following the hearing, Dr. Scheier added to appellant's medical history the detail that on November 11, 2008 she was lifting a case of Ensure when her injury occurred. This history was provided some nine months after the fact. There is no explanation by the physician that adequately addresses the inconsistencies in the histories obtained. She advised the employing establishment on November 13, 2008 of a November 11, 2008 lifting incident but did not so advise Dr. Scheier. These inconsistencies in the evidence cast serious doubt that appellant's injury was sustained at the time, place and in the manner alleged.

The second component of fact of injury is whether appellant sustained a medical condition as a result of the alleged incident. On November 13, 2008 Dr. Scheier provided findings on physical examination and diagnosed sciatica. He noted that appellant had been working for weeks with left sciatic pain. She performed lifting, pushing and pulling in her job but had no recall of any specific incident that caused her condition. On April 21, 2009 Dr. Scheier provided a different medical history, that appellant had an acute exacerbation of her sciatica on November 11, 2008 due to lifting pulling and pushing at work. These reports are based on a conflicting medical history. They also lack any rationalized explanation as to how appellant's medical condition was causally related to the November 11, 2008 lifting incident as alleged. Due to these deficiencies, they do not establish that appellant sustained an injury on November 11, 2008 while in the performance of duty. On January 15, 2009 Dr. Walter provided a history that appellant was kneeling at work on November 11, 2008 when she felt a pulling sensation in her left buttock and low back pain. Her sciatica had gotten progressively worse. Dr. Walter did not provide a rationalized explanation as to how appellant's sciatica was caused by her work activities on November 11, 2008. Therefore, this report does not establish that appellant sustained an injury on November 11, 2008 while in the performance of duty. The medical evidence does not establish a work-related injury on November 11, 2008.

Appellant failed to meet her burden of proof to establish that she sustained an injury on November 11, 2008 at the time, place and in the manner alleged.

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained a traumatic injury on November 11, 2008 at the time, place and in the manner alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 24, 2009 is affirmed.

Issued: October 14, 2010  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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