

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

M.B., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Atlanta, GA, Employer**

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**Docket No. 10-1914
Issued: August 8, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 9, 2010 appellant filed a timely appeal from Office of Workers' Compensation Programs' (OWCP) decision dated January 15, 2010. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 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 low back injury in the performance of duty on May 24, 2008.

FACTUAL HISTORY

Appellant, then a 36-year-old correctional officer, filed a claim for benefits on May 24, 2008, alleging that she injured her lower back, right knee, right shoulder and right upper arm when she slipped on a puddle of water while descending a flight of stairs.

¹ 5 U.S.C. § 8101 *et seq.*

Appellant submitted form reports dated May 27 and June 10, 2008 which indicated that she was experiencing lower back, right knee and right shoulder pain and that she had sustained an injury on May 24, 2008. The slips were signed by a physician's assistant.

By letter dated June 3, 2008, OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her conditions and an opinion as to whether her claimed conditions were causally related to her federal employment. OWCP advised appellant that all medical reports submitted had to be signed or countersigned by a physician. It requested that she submit the additional evidence within 30 days.

By decision dated July 15, 2008, OWCP denied appellant's claim finding that she did not submit medical evidence sufficient to establish that she sustained an injury in the performance of duty on May 24, 2008. It stated that it had informed her that all medical evidence submitted had to be signed or countersigned by a physician; however, the reports she provided were signed by a physician's assistant. OWCP further found that none of the reports contained a diagnosis of the claimed conditions.

By letter dated September 11, 2008, appellant requested reconsideration. She stated that her treating physician had co-signed the reports she submitted which were signed by physicians' assistants. Appellant also stated that she was submitting a Form CA-16 report which contained diagnoses for injuries she sustained during the May 24, 2008 work incident.

Appellant submitted a May 28, 2008 lumbar x-ray report from a radiologist, received by OWCP on September 17, 2008, which indicated that she had mild dextroscoliosis of the lumbar spine.

In a Form CA-16 dated August 12, 2008, received by OWCP on September 17, 2008, Dr. Fred K. Hood, a Board-certified family practitioner, noted appellant's history of injury caused by slipping and falling on May 24, 2008 and indicated that she sustained right knee and right shoulder sprains due to this employment-related activity. Appellant also resubmitted form reports dated May 27 and 28, June 10 and July 3, 2008, which were co-signed by Dr. Hood.

By decision dated November 14, 2008, OWCP modified its July 15, 2008 decision, finding that appellant submitted medical evidence sufficient to establish that she sustained injuries to her right knee, right shoulder and right upper arm on May 24, 2008. It found, however, that she did not sustain a low back injury as a result of the May 24, 2008 work incident.

By letter dated December 29, 2008, appellant requested reconsideration of the November 14, 2008 decision.

Appellant submitted a July 10, 2009 treatment slip from Dr. Hood which indicated that he was treating her for shoulder, knee and back pain. She also submitted several reports from a physician's assistant.

By decision dated January 21, 2009, OWCP denied modification of the November 14, 2008 decision.

In a January 27, 2009 report, Dr. Mitzi Clayton, a Board-certified family practitioner, stated that she examined appellant after a fall on steps on May 24, 2008. She also examined her on June 10 and July 3, 2008. Dr. Clayton noted complaints of low back pain, right knee pain and right shoulder pain. She stated that on examination she detected a knot in the injured area of appellant's back and had her undergo x-ray testing. Dr. Clayton diagnosed back pain, diagnosis code 724.2, with muscle spasms noted as being caused by the fall at work. She found no documentation of any previous back-related injuries. Dr. Clayton referred appellant to a neurologist for further evaluation and treatment.

On January 21 and February 9, 2009 appellant requested reconsideration.

By decision dated April 2, 2009, OWCP denied modification.

On April 2, 2009 appellant requested reconsideration.

In a July 15, 2009 report, Dr. Cedrella C. Jones-Taylor, a specialist in internal medicine, reviewed a magnetic resonance imaging (MRI) scan dated July 13, 2009. She stated that the MRI scan showed minimal degenerative wear and tear changes but no spinal cord or nerve root compression. Dr. Jones-Taylor advised that there was evidence of degenerative disc disease at the T1-2 or L1 levels, with no central canal stenosis or foraminal narrowing at any level and no significant degenerative disc disease in the lumbar spine.

By decision dated September 24, 2009, OWCP denied modification.

By letter dated November 3, 2009, appellant requested reconsideration.

In an October 13, 2009 report, received by OWCP on November 13, 2009, Dr. Clayton essentially reiterated her previously stated findings and conclusions. She stated that appellant had been referred to a neurologist for further evaluation and treatment. Dr. Clayton advised that appellant underwent an MRI scan of her back which showed significant injury sustained to the T1-2/L1 areas of her spine; she asserted that appellant had minimal degenerative/wear and tear changes due to her employment injury.

By decision dated January 15, 2010, OWCP denied modification, after merit review of the claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing that 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged,

² *Id.* at §§ 8101-8193.

and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³

The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.⁴

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.⁵

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁶ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant claimed injury on May 24, 2008 when she slipped on water while descending stairs and fell. The record establishes that she was seen at the Eagle's Landing Family Practice on May 28, 2008. Dr. Clayton, a Board-certified family practitioner, submitted several reports that listed an accurate history of the incident at work. She noted that appellant was seen for low back, knee and right shoulder pain. During examination a knot was felt in the area of the injured back and an x-ray was performed. Dr. Clayton listed the diagnostic code of low back pain (724.2) with muscle spasms noted. Appellant was subsequently seen on June 10 and July 3, 2008 with no relief and referred to consult a neurologist.

An MRI scan of appellant's back was performed on July 13, 2009 by Dr. Jones-Taylor, who reported that there was evidence of degenerative disc disease at T12/L1, no central canal stenosis or foraminal narrowing at any level without significant evidence of disc disease. Dr. Clayton followed up in an October 13, 2009 report, again addressing the history of injury, findings on examination and stating that the MRI scan showed injury sustained to the T12/L1

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Id.*

⁵ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁶ *Id.*

region of the spine. She attributed appellant's minimal degenerative findings to the history of injury.

The Board finds that, while the reports of Dr. Clayton and the Eagle's Landing Family Practice are not sufficient to establish appellant's claim, they are sufficient to require further development of the medical evidence. The evidence submitted provided an accurate history of the May 24, 2008 incident together with findings from a contemporaneous physical examination performed on May 28, 2008. While the listed diagnosis was low back pain (724.2), Dr. Clayton advised that a knot was felt on examination of the back and that muscle spasms were noted. Diagnostic testing was obtained that included x-rays and the July 13, 2009 MRI scan that showed finding at T12/L1. Dr. Clayton reviewed the diagnostic tests and attributed the T12/L1 degenerative disc disease to the May 24, 2008 fall at work. While her opinion is not fully rationalized in light of the year between the work incident to the diagnostic testing of July 13, 2009, the reports of Dr. Clayton generally support appellant's claim of injury.⁷ The Board will remand the case to OWCP to request clarification as to the diagnostic code provided, findings of sprain or strain on examination and the nature of appellant's low back condition. After such further development as it deems appropriate, OWCP should issue a merit decision on appellant's claim of injury.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁷ See *John J. Carlone*, 41 ECAB 354 (1989). The Board has held that a delay in diagnostic testing may diminish the probative value of a medical opinion. *Linda L. Mendenhall*, 41 ECAB 532 (1990).

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded in accordance with this decision.

Issued: August 8, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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