

FACTUAL HISTORY

On July 17, 2009 appellant, then a 39-year-old mail handler, filed an occupational disease claim alleging that she sustained pain in her neck, lower back, legs, right hip, knee and ankle in the performance of duty. She attributed her condition to repeatedly lifting tubs and trays of mail. Appellant first became aware of her condition on July 9, 2009. She stopped work on July 10, 2009 and returned on July 16, 2009.

In a report dated July 9, 2009, Dr. Darryl Harris, Board-certified in emergency medicine, diagnosed a lumbar sprain. In a July 22, 2009 report, Dr. William Huey, a general practitioner, noted that appellant presented for evaluation of low back pain from an injury that occurred about 12 days earlier when she was lifting trays and had sharp lower back pains. He also noted seeing her on July 13, 2009, at which time x-rays were reported as normal although some lateral deviation and mild degeneration were present. Dr. Huey diagnosed low back pain and lumbar sprain/strain and he released appellant to modified work.

On July 30, 2009 OWCP accepted the claim for a lumbar sprain. It advised appellant that her preexisting lumbar degenerative disc disease was not accepted. Additionally, OWCP informed her of the evidence needed to support her claim for any additional condition and requested that she submit such evidence within 30 days.

In an August 21, 2009 report, Dr. Plas T. James, a Board-certified orthopedic surgeon, stated that x-rays of the lumbar spine revealed L5-S1 degenerative disc disease.

In a September 1, 2009 decision, OWCP denied appellant's claim for a consequential condition. It found that the medical evidence did not establish that her lumbar degenerative disc disease was caused by the accepted injury.

A February 22, 2010 cervical magnetic resonance imaging (MRI) scan, read by Dr. Anthony Kent Gordon, a Board-certified diagnostic radiologist, revealed degenerative disc disease and protrusion or bulge at C4-5.

In a March 5, 2010 report, Dr. James diagnosed a C4-5 herniated nucleus pulposus. In an April 2, 2010 report, he diagnosed L3-S1 facet arthropathy and recommended facet injections.

In a memorandum of telephone call dated April 16, 2010, appellant requested authorization for physical therapy related to her cervical condition. OWCP was advised that her claim was only accepted for a lumbar condition and there was no mention of a cervical condition until months after her claim was filed. Appellant was advised to file a claim for her cervical condition.

In a letter dated April 27, 2010, OWCP notified appellant of the medical evidence needed to substantiate her claim that her cervical condition was causally related to work factors.

OWCP received a May 10, 2010 report from Dr. Kamal Kabakibou, a Board-certified anesthesiologist, who performed a lumbar facet joint block. In a May 20, 2010 report, Dr. James diagnosed L3-S1 facet arthropathy. He continued to treat appellant. Additionally, several physical therapy notes were received.

In a June 10, 2010 decision, OWCP denied appellant's claim for a consequential cervical herniated disc at C4-5. It found that the medical evidence did not establish that the condition was related to her accepted low back condition or work factors.

On June 22, 2010 appellant's representative requested a telephonic hearing, which was held on September 20, 2010. During the hearing, appellant described her duties as a mail handler that included lifting up to 40 pounds, pushing heavy mail containers and throwing mail. She also noted a prior, work-related injury on September 10, 2008 accepted for the hip, knee and ankle on the right.³

In reports dated September 3 and 23, 2010, Dr. James diagnosed L3-S1 facet arthropathy. He noted appellant's complaints of low back and bilateral leg pain and noted that on July 9, 2009 she was lifting trays and tubs while working for the employing establishment. Dr. James indicated that his objective findings included constant back spasms, decreased range of motion of the lumbar spine and lower left leg muscle weakness. He diagnosed L3-4, L4-5 and L5-5 facet arthropathy. Dr. James noted that appellant reported her previous injury at work on September 10, 2008, which contributed to his diagnosis and opined that the current injury aggravated and increased the pain. OWCP also received an August 15, 2010 functional capacity evaluation (FCE) from a physical therapist.

By decision dated November 17, 2010, an OWCP hearing representative affirmed the June 10, 2010 decision, finding that the medical evidence was insufficient to establish that appellant's cervical condition was causally related to employment factors.

LEGAL PRECEDENT

Regarding consequential injuries, the basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁴

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he bears the burden of proof to establish that the condition is causally related to the employment injury.⁵ To establish a causal relationship between the condition claimed, as well as any attendant disability and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.⁶ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ Rationalized medical evidence is evidence which includes a physician's rationalized medical

³ This claim is not before the Board on the present appeal.

⁴ *S.M.*, 58 ECAB 166 (2006), citing A. Larson, *The Law of Workers' Compensation* § 10.01 (2004).

⁵ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁶ *Jennifer Atkerson*, 55 ECAB 317 (2004).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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.⁸

Neither, the 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 causal relationship.⁹

ANALYSIS

OWCP denied appellant's request to expand her claim to include a cervical condition. The issue is whether she has met the burden of proof to establish that her diagnosed conditions are causally related to her accepted 2009 injury. Appellant identified repeatedly lifting heavy tubs and trays of mail as employment factors that caused these alleged conditions. Her burden is to demonstrate, through the production of probative rationalized medical evidence, that the identified employment factors caused her alleged cervical condition. As noted, causal relationship is a medical issue. The Board finds that appellant has not met her burden of proof as the medical evidence of record is insufficient to establish that she sustained a cervical condition in the performance of duty

In support of her claim, appellant submitted reports from Dr. James. They included a March 5, 2010 report in which Dr. James diagnosed a C4-5 herniated nucleus pulposus and reports dated April 2 and May 20, 2010 in which he diagnosed L3-S1 facet arthropathy and recommended facet injections. The Board notes that Dr. James did not offer any opinion on causation of the cervical condition. He merely reported findings and did not provide an opinion regarding the cause of the reported condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁰

In reports dated September 3 and 23, 2010, Dr. James diagnosed L3-S1 facet arthropathy and noted that appellant reported her previous injury at work on September 10, 2008 and that the current injury aggravated and increased the pain. The Board notes that, while he referred to a September 10, 2008 injury, the 2008 injury is not before the Board on the present appeal. The present claim involves appellant's July 17, 2009 occupational disease claim that was accepted for a lumbar sprain. Dr. James appears to be relating the history provided by appellant instead of providing his own opinion on causal relationship. To the extent that he provided his own opinion, the Board notes that he addressed the lumbar condition and not the denied cervical

⁸ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁹ *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹⁰ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

condition that is at issue in the present appeal.¹¹ Dr. James did not otherwise explain how the claimed cervical condition is causally related to the accepted lumbar sprain. Medical conclusions unsupported by medical rationale are of diminished probative value and are insufficient to establish causal relation.¹²

Diagnostic and procedure reports submitted by appellant included February 22, 2010 cervical MRI scan, read by Dr. Gordon, which revealed degenerative disc disease and protrusion or bulge at C4-5. However, these reports merely reported findings and did not contain an opinion regarding the cause of the claimed cervical condition.

Additionally, several physical therapy notes were received along with an August 15, 2010 FCE. Section 8101(2) of FECA 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 by FECA will be accorded probative value. Health care providers such as nurses, acupuncturists, physician’s assistants and physical therapists are not physicians under FECA. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.¹³

Other reports did not address causal relationship between the claimed cervical condition and the accepted lumbar sprain. The Board notes that there is no reasoned medical evidence of record supporting appellant’s claim that she developed a cervical condition as a consequence of her accepted lumbar sprain.

Appellant may submit evidence or argument with a written request for reconsideration within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her cervical conditions are causally related to her accepted employment injuries.

¹¹ In a September 1, 2009 decision, OWCP denied that appellant’s degenerative lumbar condition was caused by the accepted lumbar sprain. Appellant did not appeal that decision and the Board currently has no jurisdiction over that decision. 20 C.F.R. § 501.3(d)(e).

¹² *Albert C. Brown*, 52 ECAB 152 (2000).

¹³ *Jane A. White*, 34 ECAB 515, 518 (1983). See 5 U.S.C. § 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2011
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