

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

S.P., Appellant)	
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)	
and)	Docket No. 11-703
)	Issued: December 23, 2011
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Fort Smith, AR, Employer)	
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Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 25, 2011 appellant, through her attorney, filed a timely appeal of a December 14, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision denying additional conditions. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant's diagnosed conditions of arthritis, fibromyalgia, incontinence, high blood pressure and headaches are causally related to her accepted employment injury on August 3, 2009.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 11, 2009 appellant, then a 51-year-old nurse, filed a traumatic injury claim, Form CA-1, alleging on August 3, 2009 that she slipped on a wet surface turning her left foot sideways and landing on her left knee, falling to the right side and landing on her right forearm. She stated that she sustained pain in the bottom of her left foot, ankle, left knee and hip and stabbing pain under her left scapula and mid back. In a note dated August 3, 2009, the employing establishment stated that appellant had chronic lumbar and thoracic pain. Appellant reported left knee, ankle, foot and back pain as a result of her fall.

By letter dated September 2, 2009, OWCP accepted appellant's claim for left ankle sprain, left knee abrasion and thoracic strain. In a separate letter of the same date, it advised her that if she felt that additional conditions were sustained as a result of the employment-related August 3, 2009 fall she should provide additional supportive medication evidence.

In a form report dated August 27, 2009, Dr. Terry Hoyt, an osteopath, diagnosed left ankle and knee sprain. He stated that appellant had a previous history of plantar fasciitis. Dr. Hoyt described her employment injury on August 3, 2009 and indicated with a checkmark "yes" that her diagnosed condition was due to her employment activity.

Dr. John Wright, a podiatrist, completed a form report on September 10, 2009 diagnosing bilateral plantar fasciitis and secondary left lower leg tendinitis. He indicated that appellant's condition was due to her August 3, 2009 employment injury. On August 18, 2009 Dr. Hoyt stated that she had a previous history of plantar fasciitis and continued to exhibit tenderness of the knee and marked tenderness of the left foot.

Dr. Hoyt diagnosed acute left lumbar paraspinal spasm on July 7, 2009 as well as lumbar disc disease and other spinal conditions. On August 28 and September 1, 2009 Dr. Keith Bolyard, a Board-certified orthopedic surgeon, diagnosed left plantar fascial strain and left knee contusion.

OWCP accepted appellant's claim for the additional conditions of foot strain or plantar fascial strain on the left, left knee strain and lumbar strain on October 7, 2009.

In notes dated August 10 and 26, 2009, Dr. Hoyt listed appellant's employment injury and described notable tissue texture changes in the back and diagnosed fibromyalgia, lumbosacral strain, anxiety and adjustment disorder. On September 9 and 23 and October 13, 2009 he examined her and found acute and chronic spasm of the scapular region, chronic thoracic and lumbosacral strain, contusion of the left knee and arthritis of the spine. An x-ray report dated September 21, 2009 found moderate degenerative disc disease at L3-4 with no degenerative changes in the hips a mild calcifications superior to the greater trochanter of the femur bilaterally.

A magnetic resonance imaging (MRI) scan of appellant's lumbar spine on September 10, 2009 demonstrated a mild diffuse disc bulge at L5-S1 with a superimposed broad-based central disc protrusion contacting the bilateral S1 nerve roots. Appellant underwent an MRI scan of her

left knee on October 12, 2009 which was read as normal. On October 14, 2009 Dr. Robert Fisher diagnosed chronic left L5-S1 radiculopathy.

By decision dated January 11, 2010, OWCP denied appellant's claim for compensation for the period September 28 to October 12, 2009.

Appellant submitted a radiology report which found no fracture or arthritic change in the left ankle, but a small dorsal calcaneal spur. Her left foot demonstrated a small calcaneal spur only. In regards to appellant's left knee there were no fractures or dislocations and no arthritic changes. Her lumbar spine x-rays demonstrated minimal spurring at L2-3, L3-4 and L4-5 with no subluxations resulting in a diagnosis of minimal degenerative changes in the lumbar spine. Appellant had some dystrophic calcification about both hips with no arthritic change or fracture.

On September 21, 2009 Dr. Thomas E. Cheyne described appellant's employment injury and stated that her medical history was significant for hypertension, arthritis, fibromyalgia and thyroid disease. He reviewed her lumbar spine x-rays and found moderate degenerative disc changes at L3-4 as well as the midline disc protrusion at L5-S1 found on MRI scan. Dr. Cheyne diagnosed lumbar disc protrusion with radiculopathy.

In a report dated January 11, 2010, Dr. Hoyt stated that as a result of her injury appellant had destabilization of her preexisting degenerative arthritis, fibromyalgia and emotional stability. He noted "Her problems with urge incontinence are also new since the injury."

Dr. Michael S. Wolfe, a Board-certified orthopedic surgeon, examined appellant on December 7, 2009 and described her employment injury. He performed a physical examination and reviewed her diagnostic tests. Dr. Wolfe stated that appellant had multiple complaints with no significant findings. He noted her diagnosis of fibromyalgia and anxiety. Dr. Wolfe stated that he did not find evidence of significant mechanical problems of the back, hip, knee, foot or ankle and no evidence of radicular symptoms. He recommended additional testing and suggested that appellant's bladder control issues were not related to her injury.

Dr. Gerald Wahman, a Board-certified urologist, examined appellant on February 19, 2010 and noted her history of injury. He noted her symptoms of urinary incontinence. Dr. Wahman diagnosed incontinence urge and prescribed medication. He stated, "It was discussed that this is probably not from [appellant's] previous injuries."

On March 18, 2010 Dr. Anthony Capocelli, a Board-certified neurosurgeon, diagnosed significant trochanteric bursitis with no significant radicular findings. He stated, "It is my thought that the relationship between the bursitis and the original injury are postural abnormalities related to the low back problems and other injuries resulting in irritation of the left hip."

Dr. Hoyt completed a report on April 1, 2010 and listed appellant's conditions as cervical and lumbar radiculopathy, urinary incontinence, headaches and psychological factors. He stated that appellant had preexisting hypertension, bipolar affective disorder, adult attention deficient disorder, fibromyalgia and generalized anxiety disorder, but was functional in her job. Dr. Hoyt stated that on March 23, 2010 her blood pressure was uncontrolled and she had developed encephalopathy. He also noted that appellant's pain had escalated and she was anxious about her

future. Dr. Hoyt recommended further neurologic and psychiatric treatment and stated that appellant was totally disabled.

By decision dated May 6, 2010, OWCP denied appellant's claim for compensation benefits from December 7, 2009.

OWCP's medical adviser reviewed appellant's claim on May 21, 2010. He reviewed the medical records and stated that the only diagnosis that could be documented was an abrasion of the left knee. OWCP's medical adviser stated that the conditions of arthritis, fibromyalgia, bladder incontinence, high blood pressure or headaches were not supported as having any relationship to the accepted employment injury.

On May 27, 2010 OWCP denied appellant's claim for any consequential conditions resulting from her employment injury. It stated that she had not established the additional conditions of arthritis, fibromyalgia, bladder incontinence, high blood pressure or headaches as resulting from the August 3, 2009 work injury. Appellant, through counsel, requested a telephonic hearing.

OWCP referred appellant for a second opinion evaluation with Dr. Alice M. Martinson, a Board-certified orthopedic surgeon. In a report dated August 9, 2010, Dr. Martinson described appellant's employment injury and her continued symptoms of left anterior knee pain, persistent low back pain, radiating left leg pain and left ankle weakness. She noted that appellant had a preexisting condition of obsessive-compulsive disorder, fibromyalgia since 1993 and worsening depression. Appellant also reported bladder urgency. Dr. Martinson performed a physical examination and reviewed diagnostic studies. She diagnosed lumbar sprain without evidence of radiculopathy, thoracolumbar strain without evidence of radiculopathy, left knee and ankle sprains, fibromyalgia and obsessive-compulsive disorder marked by agitation and anxiety. Dr. Martinson stated that appellant had very little or no objective findings shortly after her work injury. She stated that there is no clinical or imaging evidence of significant pathology in the left knee or left ankle. Dr. Martinson stated that appellant's psychiatric condition was her primary limiting diagnosis. In response to specific questions from OWCP, she stated that appellant had "no objective evidence of a diagnosis" that could be considered a residual of her August 3, 2009 employment injury with no clinical or diagnostic findings that the accepted condition was still active. Dr. Martinson stated that appellant was physically capable of returning to her date-of-injury position, but that her psychiatric condition needed to be clarified. She stated that from an orthopedic standpoint appellant had no physical limitations.

On August 24, 2010 OWCP proposed to terminate appellant's compensation benefits. By decision dated September 27, 2010, it terminated her compensation and medical benefits effective that date.²

Appellant testified at the oral hearing on October 12, 2010 alleging that she had developed arthritis of her left knee as a result of the accepted employment injury. She stated that

² As appellant did not request review of this decision by the Board, the Board will not consider this issue on appeal. See 20 C.F.R. § 501.3. Appellant requested a telephonic hearing before OWCP's hearing representative on this decision in a letter dated October 5, 2010.

her preexisting fibromyalgia was aggravated by her employment injury. Appellant also attributed her bladder incontinence to her employment injury. She noted that she was diagnosed with a cystocele. Appellant also attributed her high blood pressure to the pain and stress from her employment injury. She stated that she sustained a bulging disc as a result of the employment injury.

By decision dated December 14, 2010, OWCP's hearing representative found that the medical evidence supporting appellant's additional conditions was not sufficiently detailed and well reasoned to meet her burden of proof.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and 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 and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴

To establish a causal relationship between a claimant's condition and any attendant disability claim and the employment injury, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁵ A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁶ Medical rationale 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 activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.⁷

ANALYSIS

In addition to the conditions accepted by OWCP as related to the August 3, 2009 employment injury which include left ankle sprain, left knee abrasion and thoracic strain, foot strain or plantar fascial strain on the left, left knee strain and lumbar strain, appellant has alleged further medical conditions were caused or aggravated by this injury. The additional conditions

³ 5 U.S.C. §§ 8101-1893.

⁴ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

⁵ *T.H.*, 59 ECAB 388 (2008).

⁶ *T.F.*, 58 ECAB 128 (2006).

⁷ *A.D.*, 58 ECAB 149 (2006).

include arthritis, fibromyalgia, bladder incontinence, high blood pressure and headaches. As noted above, appellant has the burden of proof in establishing that these additional conditions were caused or aggravated by the August 3, 2009 employment injury.

The record contains voluminous medical records addressing appellant's various conditions. Appellant's attending physician, Dr. Hoyt completed a report on January 11, 2010 and opined that as a result of appellant's accepted injury she had destabilization of her preexisting degenerative arthritis, fibromyalgia and emotional stability and suggested that she had developed incontinence as result of the injury. This report is not sufficient to meet appellant's burden of proof in establishing any additional conditions as resulting from her employment injury as Dr. Hoyt did not provide any medical reasoning explaining how and why he believed that her employment injury could destabilize her preexisting conditions or result in incontinence. Without a description in medical terms detailing the specific relationship between her injury and her diagnosed conditions, this report is not sufficient to meet appellant's burden of proof.

On September 21, 2009 Dr. Cheyne described appellant's employment injury and diagnosed hypertension, arthritis, fibromyalgia and thyroid disease as well as lumbar disc protrusion with radiculopathy. He did not offer any opinion on the causal relationship between her diagnosed conditions and her accepted employment injury, instead stating that her medical history included hypertension, arthritis, fibromyalgia and thyroid disease. In his December 7, 2009 report, Dr. Wolfe stated that appellant's physical examination revealed no significant findings. He mentioned her diagnosis of fibromyalgia and anxiety and opined that her bladder control issues were not related to her injury. This report does not contain an opinion supporting a causal relationship between appellant's employment injury and the alleged conditions. Furthermore, Dr. Wolfe negated a causal relationship between her injury and her incontinence. Dr. Wahman, a Board-certified urologist, also negated a causal relationship between appellant's urinary incontinence and her accepted employment injury. As these reports do not support or negate a causal relationship between her diagnosed conditions and her employment injuries, these reports are not sufficient to meet her burden of proof.

Dr. Capocelli completed a report on March 18, 2010 diagnosing trochanteric bursitis. He opined, "It is my thought that the relationship between the bursitis and the original injury are postural abnormalities related to the low back problems and other injuries resulting in irritation of the left hip." The Board finds that, while this report supports a causal relationship between appellant's employment injury and trochanteric bursitis, Dr. Capocelli did not provide a clear statement describing the accepted employment conditions which would have resulted in postural abnormalities and did explain how and why the employment injury and any resulting postural abnormalities would have resulted in irritation of the left hip and resulting trochanteric bursitis. Without further explanation of the biomechanical process by which appellant's accepted employment injury, resulted in this condition, the Board finds that the medical evidence in the record is not sufficient to meet her burden of proof.

On April 1, 2010 Dr. Hoyt described appellant's current conditions as cervical and lumbar radiculopathy, urinary incontinence, headaches and psychological factors. He stated that she had preexisting hypertension, bipolar affective disorder, adult attention deficient disorder, fibromyalgia and generalized anxiety disorder, but was functional in her job. Dr. Hoyt stated on

March 23, 2010 appellant's blood pressure was uncontrolled and she had developed encephalopathy. He also noted that her pain had escalated and she was anxious about her future. This report does not clearly attribute the diagnosed conditions to appellant's employment injury and does not provide any medical explanation of how or why her fall and resulting employment injuries would result in the diagnosed conditions. For these reasons, the Board finds that this report is not sufficient to meet her burden of proof.

Dr. Martinson found that appellant had "no perspective evidence of a diagnosis" that could be considered a residual of her August 3, 2009 employment injury with no clinical or diagnostic findings that an accepted condition was still active. This report does not support her claim for an additional medical conditions resulting from her accepted employment injury and clearly cannot meet her burden of proof.

The Board finds that the medical evidence in the record is not sufficiently detailed and well rationalized to establish that any additional medical condition resulted from appellant's August 3, 2009 employment injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP 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 has not met her burden of proof in establishing that she sustained the conditions of arthritis, fibromyalgia, incontinence, high blood pressure and headaches as a result of her accepted employment injury on August 3, 2009.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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