

ISSUE

The issue is whether appellant established that she sustained a back injury on April 7, 2010, as alleged.

On appeal, appellant contends that she sustained an employment-related back injury on April 7, 2010 for which medical treatment is warranted.

FACTUAL HISTORY

On April 14, 2010 appellant, then a 33-year-old research analyst, filed a traumatic injury claim (Form CA-1) alleging that on April 7, 2010 she hurt the left side of her lower back when the shuttle bus returning her to her hotel was involved in an accident. She was on temporary-duty assignment in Ecuador. It was raining heavily, another vehicle cut off the shuttle bus driver, the bus driver pulled on the brakes and appellant fell to the front of the bus. On the reverse of the Form CA-1, the employing establishment stated that she was in the performance of duty as she was on a 45-day temporary-duty assignment at the U.S. Embassy in Ecuador at the time of the incident.

By letter dated April 23, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit factual and medical evidence, including a rationalized medical opinion from an attending physician describing a history of injury and prior employment-related and nonemployment-related injuries to the same parts of the body, and a firm diagnosis of any condition resulting from the injury, findings, symptoms and/or test results supportive of all diagnosed conditions, treatment, prognosis, and period and extent of disability together with an explanation as to why the diagnosed condition was caused or aggravated by the April 7, 2010 incident. Appellant was afforded 30 days to submit the requested evidence. She did not respond.

In a May 24, 2010 decision, OWCP denied appellant's claim for failing to submit factual and medical evidence establishing that she sustained an injury while in the performance of duty.

On June 16, 2010 appellant requested a review of the written record by an OWCP hearing representative.

An employing establishment health unit treatment note dated April 8, 2010 provided a history of the April 7, 2010 incident. It noted appellant's complaints of chronic back pain with numbness radiating to her bilateral thighs and difficulty in moving. She had a lengthy history of severe scoliosis. Appellant took several medications to treat her chronic back pain. The treatment notes provided findings on physical examination. A computerized tomography (CT) scan was ordered to rule out a fracture versus a sprain in the lower lumbosacral area of the spine. Employing establishment health unit treatment notes dated April 12 through 19 and May 5, 2010 addressed appellant's pain and medical treatment.

In an April 8, 2010 medical report, Dr. Zamora Pazmino Cesar German, a radiologist, advised that a CT scan of the vertebrae revealed a moderate hipodense convex left lumbar rotoscoliosis of five millimeters at the mid segment of the inferior platform of L3 with marginal

sclerosis which gave the impression to be sequelae of spondylitis sequel. She recommended correlation with appellant's medical history. Dr. German found a diffuse disc prolapsed without mid posterior syndesmophyte. There were no images that suggested traumatic pathology. There was discrete discarthrosis at L4-L5. Dr. German recommended a magnetic resonance imaging scan.

In a September 28, 2010 decision, an OWCP hearing representative affirmed the May 24, 2010 decision, finding that the medical evidence was insufficient to establish a diagnosed condition causally related to the established April 7, 2010 incident.³

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 FECA; that the claim was filed within applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁷ In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁸

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁹ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and

³ On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before OWCP at the time of the final decision. See 20 C.F.R. § 501(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 5.

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁸ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁹ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

medical background, showing a causal relationship between the claimed condition and the identified factors.¹⁰ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹¹

ANALYSIS

OWCP accepted that appellant was involved in a motor vehicle accident in the performance of duty on April 7, 2010 while working as a research analyst. The Board finds that the medical evidence of record is insufficient to establish that her back condition was caused or aggravated by the April 7, 2010 employment incident.

The employing establishment health unit treatment notes dated April 8 through May 5, 2010 addressed appellant's back pain and numbness in her bilateral thighs and medical treatment. The April 8, 2010 treatment note reviewed a history of the April 7, 2010 employment incident and ordered a CT scan to rule out a fracture versus a sprain in the lower lumbosacral spine area. These records though do not provide a diagnosis of a specific medical condition or any medical opinion addressing how any condition was causally related to the accepted employment incident.¹² The Board finds, therefore, that the employing establishment health unit treatment notes are insufficient to establish appellant's claim.

Dr. German's April 8, 2010 diagnostic test results did not provide a medical opinion addressing whether the diagnosed lumbar conditions were causally related to the April 7, 2010 employment incident.¹³ The Board finds that her report is insufficient to establish appellant's claim.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a back injury causally related to the accepted April 7, 2010 employment incident. She did not meet her burden of proof.

On appeal, appellant contended that she sustained a back injury causally related to the April 7, 2010 employment incident for which medical treatment was necessary. For the reasons stated, the Board finds that appellant did not submit sufficiently rationalized medical evidence to establish her claim.

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.

¹⁰ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹¹ *Charles E. Evans*, 48 ECAB 692 (1997).

¹² *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹³ *Id.*

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a back injury in the performance of duty on April 7, 2010, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the September 28, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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