

FACTUAL HISTORY

On October 8, 2009 appellant, then a 55-year-old facilities and security supervisor, filed an occupational disease claim (Form CA-2) alleging that she developed lower back, buttock and leg conditions which she attributed the duties of her federal employment.

By letter dated October 19, 2009, OWCP requested additional evidence to support her claim and allotted 30 days for submission.

In an August 20, 2009 report, Dr. Kearny Quinn Robert, III, a Board-certified orthopedic surgeon, diagnosed swelling of right knee consistent with a Baker's cyst. In an August 27, 2009 report, he diagnosed spondylolisthesis and discogenic pain in right leg and back. In a September 24, 2009 progress report, Dr. Robert indicated that appellant's condition worsened after therapy and a magnetic resonance imaging (MRI) revealed large disc herniation at L5-S1.

By decision dated November 24, 2009, OWCP denied appellant's claim finding that the medical evidence submitted was not sufficient to establish causal relationship.

In a November 12, 2009 report, Dr. Miguel Ridgley, a chiropractor, diagnosed cervicalgia, low back pain, cervical subluxation and lumbar nerve root compression. He noted that he first treated appellant on July 31, 2009 for neck and lower back pain after having moved objects at work. Appellant provided a history of intermittent pain aggravated primarily by prolonged standing and sitting.

In a September 17, 2009 radiological report, Dr. Brandt Zimmer, a Board-certified radiologist, diagnosed moderate-sized central and right posterior paracentral disc extrusion at L5-S1 and degenerative changes in the lower lumbar spine. In an August 21, 2009 radiological report, he indicated that there was no sonographic evidence of deep venous thrombosis (DVT) in the right lower extremity.

On December 22, 2009 appellant requested reconsideration and submitted additional evidence.

In a December 3, 2009 report, Dr. Ridgley indicated that appellant initially began treatment in December 2009 for lower back pain and was evaluated for neck and lower back pain on July 31, 2009 after moving objects two days earlier. He opined that appellant's back condition could have been aggravated and worsened by any repeated pushing, pulling, stooping, standing, or with any lifting over 10 pounds.

In a December 11, 2009 report, Dr. Robert indicated that he began treating appellant for right heel pain on December 11, 2008. He reported that appellant complained of lower back pain on August 20 and 27, 2009, but he did not treat her for lower back pain. Dr. Robert opined that pushing, pulling, lifting, bending, stooping, and standing for long periods of time could cause lower back pain and indicated that it was possible that those activities could have attributed to appellant's lower back pain.

By decision dated December 29, 2009, OWCP denied modification of the November 24, 2009 decision on the grounds that the medical evidence submitted was not sufficient to establish causal relationship.

On April 2, 2010 appellant requested reconsideration. In a February 15, 2010 report, Dr. John. C. Steck, a Board-certified neurosurgeon, diagnosed sciatica which is intractable with a herniated disc. He opined that appellant's back condition developed after heavy lifting at work in June or July 2009. In a separate February 15, 2010 report, Dr. Steck advised appellant to return to light-duty work with the following restrictions: no stooping, bending, or pushing, pulling, lifting or carrying over 20 pounds.

By decision dated April 21, 2010, OWCP denied modification on the grounds that the medical evidence submitted was not sufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time limitation period of FECA, and that an injury⁴ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty, in a claim for an occupational disease, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee'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 employee, must be one of reasonable medical certainty and must be

³ 5 U.S.C. §§ 8101-8193.

⁴ OWCP's regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁵ *O.W.*, Docket No. 09-2110 (issued April 22, 2010). See *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁷

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish that her federal employment caused or aggravated her lower back, buttock or leg conditions. Appellant submitted a statement in which she identified the factors of employment that she believed caused the condition. In order to establish a claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her medical conditions were caused or aggravated by the implicated employment factors.⁸

In a February 15, 2010 report, Dr. Steck diagnosed sciatica opined by history that appellant's back condition started after lifting at work in June/July 2009. He also advised appellant to return to light-duty work with restrictions. Although Dr. Steck identified lifting in appellant's federal employment, Dr. Steck failed to directly address the issue of causal relationship. He did not provide a medical opinion explaining how factors of appellant's federal employment, such as heavy lifting, caused or aggravated her sciatica condition. Lacking thorough medical rationale on the issue of causal relationship, Dr. Steck's reports are insufficient to establish that appellant sustained an employment-related injury.

In an August 20, 2009 report, Dr. Robert diagnosed swelling of right knee consistent with a Baker's cyst. On August 27, 2009 he diagnosed spondylolisthesis and discogenic pain in right leg and back. In a September 24, 2009 progress report, Dr. Robert indicated that an MRI scan revealed large disc herniation at L5-S1. In a December 11, 2009 report, he noted that he began treating appellant for right heel pain on December 11, 2008 and reported that she complained of lower back pain on August 20 and 27, 2009, but he did not treat her for it. Dr. Robert stated that it was possible that pushing, pulling, lifting, bending, stooping and standing for long periods of time could have attributed to appellant's lower back pain. Although he provided firm medical diagnoses, Dr. Robert's reports did not provide a fully rationalized medical opinion evidence explaining how appellant's leg and back conditions were caused or aggravated by factors of her federal employment. Moreover, his opinion was couched in terms of possibility, thereby rendering it speculative in nature and further diminishing the probative value.

In a September 17, 2009 radiological report, Dr. Zimmer diagnosed moderate-sized central and right posterior paracentral disc extrusion at L5-S1 and degenerative changes in the lower lumbar spine. In an August 21, 2009 radiological report, Dr. Zimmer indicated that there was no evidence of DVT in the right lower extremity. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ The medical reports of Dr. Zimmer are

⁷ *O.W.*, *supra* note 5.

⁸ *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

⁹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

therefore insufficient to meet appellant's burden of proof to establish causal relationship between her lower back, buttock and leg conditions and factors of her federal employment as none of them offer an opinion on causal relationship.

The November 12, 2009 and December 3, 2009 medical reports of Dr. Ridgley, a chiropractor, are of no probative value. The Board has noted that a chiropractor is a physician as defined under FECA to the extent that the reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.¹⁰ Dr. Ridgley diagnosed cervical subluxation, however, there is no evidence to establish that he diagnosed a subluxation as demonstrated by x-ray to exist. Therefore, Dr. Ridgley is not a physician and his reports do not constitute competent medical opinion.

Appellant has not submitted sufficient rationalized medical evidence to establish that her claimed conditions are causally related to her work as a facilities and security supervisor. She failed to meet her burden of proof 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.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a lower back, buttock and leg condition in the performance of duty causally related to factors of her federal employment.

¹⁰ 20 C.F.R. § 10.311.

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 22, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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