

FACTUAL HISTORY

On June 21, 2010 appellant, then a 40-year-old realty assistant, filed a traumatic injury claim alleging that she injured her back that day while lifting a printer at work.

In a letter dated August 10, 2010, OWCP informed appellant that the evidence of record was insufficient to support her claim. It requested additional medical and factual evidence to support her claim.

Appellant submitted medical reports and diagnostic tests. A June 21, 2010 x-ray of the lumbar spine revealed no significant compression fractures, mild degenerative low lumbar disc disease and a lumbar alignment within normal range. An x-ray of the sacrum-coccyx taken on June 21, 2010 showed no evidence of any acute process involving either the coccyx or sacrum. A review of a June 25 computerized tomography (CT) scan of the lumbar spine showed no evidence of acute fracture and a mild L4-5 protruding left paracentral disc. A July 16, 2010 magnetic resonance imaging (MRI) scan revealed L4-5 degenerative disc disease with a mild protruding disc at L4-5 with no significant stenosis or significant change when compared to the June 25, 2010 report.

In a June 21, 2010 emergency room report, a physician's assistant reported appellant was seen for low back pain as a result of her lifting a printer at work.²

In a June 23, 2010 clinic note, Beverly Mayberry, a nurse practitioner, saw appellant for low back pain as a result of her lifting a printer on June 21, 2010. In a June 25, 2010 clinic note, she diagnosed lumbago.

In progress notes dated June 28 through August 10, 2010, Kerry Thomas Nickou, a nurse practitioner, diagnosed low back pain and sciatica. A physical examination performed on July 1, 2010 revealed tenderness along the L5-S1 spinal processes and bilateral sacroiliac joints and positive bilateral straight leg raising. On August 10, 2010 Ms. Nickou diagnosed left ankle sprain. She also noted that appellant related injuring her back on June 21, 2010 as the result of lifting a printer and appellant had not worked since that day.

On August 18, 2010 George Webber, a physical therapist, provided therapy notes and diagnosed L4-5 degenerative disc disease with mild left L4-5 protruding posterolateral disc without significant stenosis and no neural impingement.

On August 26, 2010 Dr. Ernest J. Gray, an examining physician, reported that appellant had been seen multiple times by Ms. Nickou for her back complaints and related the findings from the diagnostic testing. There was no evidence of acute fracture, no neural impingement and a L4-5 left paracentral protruding disc without significant stenosis or significant changes from the June 25, 2010 CT scan.

In an August 2, 2010 report, Dr. Andrew W. Garrison, an examining physician, reported appellant sprained her back about a month prior while lifting at work. He noted that a July 6,

² The name on the form is illegible.

2010 MRI scan reported L4-5 degenerative disc disease with mild L4-5 left posterolateral protruding disc with no significant stenosis or change since a June 25, 2010 CT scan. Under assessment, Dr. Garrison noted hypertension, obesity, back pain, unspecified Vitamin D deficiency and asthma.

By decision dated September 23, 2010, OWCP denied appellant's claim on the grounds that she failed to establish fact of injury. It found the record contained insufficient medical evidence to establish her back condition was causally related to the June 21, 2010 employment incident.

On September 23, 2010 OWCP received a September 9, 2010 report from Dr. Steven J. Rizzolo, an examining Board-certified orthopedic surgeon, who reported that appellant was injured at work when she lifted a printer weighing about 60 pounds. He related that she had been off work since the injury on June 21, 2010. A physical examination revealed limited back range of motion, negative straight leg raising and normal strength. Dr. Rizzolo diagnosed low back pain, L5 radiculitis and probable discogenic injury with possible nerve root injury. He suspected a disc injury with some nerve irritation and an annular tear.

On September 28, 2010 appellant requested reconsideration.

By decision dated November 16, 2010, OWCP denied modification. It found that there was insufficient medical evidence addressing the causal relationship of her low back condition to the June 21, 2010 incident of lifting a printer.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his 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 the 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.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the

³ *Id.*

⁴ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *C.S.*, Docket No. 08-1585 (issued March 3, 2009).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009).

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements.⁹ The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.¹⁰

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.¹¹ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere 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 a causal relationship.¹²

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹³ 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 compensable employment factors.¹⁴ 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 supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁵

ANALYSIS

Appellant alleged that she injured her lower back when she lifted a printer on June 21, 2010. The Board finds that the claimed incident occurred as alleged; but the medical

⁸ *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4; *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

⁹ *Barbara R. Middleton*, 56 ECAB 634 (2005); *C.S.*, *supra* note 4.

¹⁰ *H.G.*, 59 ECAB 552 (2008); *Betty J. Smith*, 54 ECAB 174 (2002).

¹¹ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

¹² *Dennis M. Mascarenas*, 49 ECAB 215 (1997); *P.K.*, Docket No. 08-2551 (issued June 2, 2009).

¹³ *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

¹⁴ *Michael S. Mina*, 57 ECAB 379 (2006); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

¹⁵ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

evidence is insufficient to establish that the work incident caused an injury. The medical evidence contains no firm diagnosis, rationale or explanation of the mechanism of injury arising from the employment incident on June 21, 2010.¹⁶

Appellant provided a September 9, 2010 report from Dr. Rizzolo, an examining Board-certified orthopedic surgeon, who noted that appellant sustained a work injury as a result of lifting a printer weight about 60 pounds. Dr. Rizzolo diagnosed low back pain, L5 radiculitis and probable discogenic injury with possible nerve root injury and suspected a disc injury with probable nerve irritation and annular tear. He did not explain how lifting the printer on June 21, 2010 resulted in the diagnosed condition. 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.¹⁷ As his report lacked the necessary rationale, Dr. Rizzolo's medical report is insufficient to meet appellant's burden of proof.

Appellant also provided several nursing notes, physical therapy reports and a report from a physician's assistant. 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 under FECA is accorded probative value. Health care providers such as nurses, physician's assistants and physical therapists are not physicians under FECA. Thus, their opinions on causal relationship do not constitute probative medical opinions.¹⁸

The record also contains June 21, 2010 x-ray interpretations of the lumbar spine and sacrum-coccyx, a June 25 CT scan of the lumbar spine and July 16, 2010 MRI scan. These diagnostic reports are insufficient to establish appellant's claim as the issue of causal relationship was not addressed.¹⁹

Because the medical reports submitted by appellant do not sufficiently address how the June 21, 2010 incident caused or aggravated a back injury, these reports are of limited probative value and are insufficient to establish that the June 21, 2010 employment incident caused or aggravated a specific 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.

¹⁶ See *S.D.*, 58 ECAB 713 (2007); *Cecelia M. Corley*, 56 ECAB 662 (2005) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value). *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁷ *Jaja K. Asaramo*, 55 ECAB 200 (2004); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, *supra* note 16.

¹⁸ See 5 U.S.C. § 8101(2); *David P. Sawchuk*, 57 ECAB 316 (2006); *Sean O. Connell*, 56 ECAB 195 (2004); *Allen C. Hundley*, 53 ECAB 551 (2002) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA). *E.H.*, Docket No. 08-1862 (issued July 8, 2009).

¹⁹ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, *supra* note 17; *Michael E. Smith*, 50 ECAB 313 (1999).

CONCLUSION

The Board finds that appellant has established that she sustained an injury in the performance of duty on June 21, 2010.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 16, 2010 is affirmed.

Issued: September 29, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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