

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

K.T., Appellant

and

**DEPARTMENT OF THE NAVY, MARINE
CORPS AIR STATION, Beaufort, SC, Employer**

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**Docket No. 11-1422
Issued: February 2, 2012**

Appearances:
Norman R. McNutly, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 1, 2011 appellant, through her attorney, filed a timely appeal from a December 10, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury on February 3, 2010 in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 11, 2010 appellant, then a 39-year-old engineering technician, filed a claim alleging that on February 3, 2010 she experienced pain in her low back and leg spasms when she “started to stand after sitting for [two] hours.” She worked modified duty following her injury.

In a form report dated February 11, 2010, Dr. Vincent Rhodesmo, who specializes in family practice, diagnosed lumbago and paresthesia. He obtained a history of appellant having a sudden onset of pain when she began to stand after sitting in a chair. Dr. Rhodesmo related that he was not sure if the condition was caused or aggravated by an employment activity.

On March 8, 2010 Dr. Jeffery M. Reuben, a Board-certified orthopedic surgeon, evaluated appellant for complaints of low back pain beginning February 3, 2010 when she got up after sitting at her desk. He interpreted a February 25, 2010 magnetic resonance imaging (MRI) scan study of the lumbar spine as showing a central disc herniation at L4-5 with mild encroachment on the L4 nerve and a right disc herniation at L5-S1 impinging on the S1 nerve root. Dr. Reuben stated, “At this point in time [appellant] and I had a lengthy discussion regarding her symptomatology and that she did not have these symptoms prior to getting up from a seated position at the desk and then started having significant low back pain and then leg pain a week later.” He found that she could continue working with restrictions pending a functional assessment.

By letter dated April 12, 2010, OWCP informed appellant that the evidence was currently insufficient to show that she actually experienced the claimed work factor or that she sustained a medical condition due to a work injury. It requested that she submit additional factual and medical evidence, including a detailed medical report explaining whether any diagnosed condition was caused or aggravated by the claimed employment incident.

In an April 19, 2010 progress report, Dr. Reuben related that appellant had a prior history of low back pain in 2008 without a specific injury. He discussed her February 3, 2010 back pain when she stood after sitting for an extended period. Dr. Reuben recommended continued modified duty and stated:

“At this point in time I would recommend that we state that [appellant] had a preexisting quiescent condition, which was aggravated by a work[-]related injury. Obviously, this was not a specific traumatic event but it was prolonged sitting and when she stood up at work she started to have her pain. Therefore, if we do believe [appellant’s] story, which I do, we would assume that this would be covered under workers’ compensation.”

By decision dated May 25, 2010, OWCP denied appellant’s claim, finding that the evidence was insufficient to establish that the February 3, 2010 incident occurred as alleged.

On June 10, 2010 appellant requested reconsideration.² In a June 3, 2010 progress report, Dr. Reuben noted that OWCP had denied her claim. He related that it was “certainly reasonable

² On May 28, 2010 Dr. Reuben found that appellant could work full time with restrictions effective May 31, 2010.

to have workers' comp[ensation] cover" the claim. In an accompanying note, Dr. Reuben provided work restrictions.

By decision dated August 16, 2010, OWCP modified the May 25, 2010 decision to show that appellant established that the February 3, 2010 incident occurred as alleged. It found, however, that the medical evidence was insufficient to establish that she sustained a low back condition causally related to the February 3, 2010 employment incident.

In a report dated October 7, 2010, Dr. Reuben related that a December 4, 2008 MRI scan study revealed degenerative disc disease at L5-S1 without herniation. Appellant experienced no further back pain until the February 3, 2010 work incident, when she stood up after sitting all day and sustained back pain. A week later she began to have right leg pain. Dr. Reuben advised that it was common for a person to experience the leg pain subsequent to the herniation due to the release of disc material. He noted that a February 25, 2010 MRI scan study showed disc herniations at L4-5 and L5-S1. Dr. Reuben stated:

"Therefore, I do feel to a reasonable degree of medical certainty most probably that [appellant] did have preexisting degenerative disc disease according to her MRI scan but did not have preexisting disc herniations or lumbar radiculitis. I do feel that her work-related injury which occurred on February 3, 2010 aggravated her preexisting degenerative disc disease and more probably than not caused her lumbar herniated discs which caused her lumbar radiculitis."

On October 25, 2010 appellant requested reconsideration. In a decision dated December 10, 2010, OWCP denied modification of its August 16, 2010 decision. It found that Dr. Reuben did not provide adequate rationale explaining how the February 3, 2010 work incident caused her disc herniations.

On appeal, appellant's representative summarize Dr. Reuben's reports and asserted that the physician's opinion is sufficient to either meet her burden of proof or to require further development of the claim.

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 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

³ *Supra* note 1.

⁴ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁵ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁷ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁸

ANALYSIS

Appellant alleged that she sustained low back pain on February 3, 2010 when she began to stand after sitting for an extended period of time. OWCP accepted that the incident occurred at the time, place and in the manner alleged. The issue is whether the medical evidence establishes that appellant sustained an injury as a result of this incident.

The Board finds that appellant has not established that the February 3, 2010 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is established by medical evidence.⁹ In a form report dated February 11, 2010, Dr. Rhodesmo described a history of appellant experiencing pain when she began to stand after sitting in a chair.¹⁰ He diagnosed lumbago and paresthesia and indicated that he was unsure whether the condition was caused or aggravated by the employment activity. As Dr. Rhodesmo could not determine whether the diagnosed conditions resulted from the February 11, 2010 work incident, his opinion is insufficient to meet appellant’s burden of proof.

Dr. Reuben examined appellant on March 8, 2010 for low back and right leg pain. He found that a February 25, 2010 MRI scan study showed disc herniations with nerve encroachment at L4-5 and L5-S1. Dr. Reuben listed work restrictions and noted that appellant related that she experienced back and right leg symptoms beginning when she got up from her desk. While he indicated that she told him that she was asymptomatic prior to standing on February 3, 2010, he did not provide an independent opinion relating the February 3, 2010 work incident to the disc herniations. A physician’s report is of little probative value when it is based on a claimant’s belief rather than the physician’s independent judgment.¹¹

⁶ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁸ *Id.*

⁹ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹⁰ The employing establishment authorized treatment for appellant on February 11, 2010 with a Form CA-16. A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *Elaine M. Kreyborg*, 41 ECAB 256, 259 (1989). OWCP did not address this issue in its decisions.

¹¹ See *Earl David Seale*, 49 ECAB 152 (1997).

In an April 19, 2010 progress report, Dr. Reuben noted that appellant had previously experienced low back pain in 2008. He opined that she had a preexisting back condition aggravated by the February 3, 2010 work incident. Dr. Reuben stated, “Obviously this was not a specific traumatic event but it was prolonged sitting and when she stood up at work she started to have her pain.” On June 3, 2010 he again indicated that it was reasonable for OWCP to cover the injury. Dr. Reuben did not explain, however, the mechanism by which standing at work on February 3, 2010 after sitting at her desk resulted in a low back condition or disc herniation. A physician’s opinion on causal relationship between a claimant’s disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.¹²

On October 7, 2010 Dr. Reuben found that a December 4, 2008 MRI scan study revealed degenerative disc disease at L5-S1 without herniation but that a February 25, 2010 MRI scan study showed L4-5 and L5-S1 disc herniations. He reviewed appellant’s symptoms of back pain after standing on February 3, 2010 and right leg pain a week later and noted that it was common for leg pain to follow the back pain due to the extrusion of disc material. Dr. Reuben asserted that the February 3, 2010 work incident aggravated her preexisting disc disease and, to a reasonable degree of certainty, resulted in her herniated lumbar discs and radiculitis. Again, however, he did not explain how standing on February 3, 2010 caused the disc herniation and radiculitis. A physician must provide an opinion on whether the employment incident described caused or contributed to claimant’s diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rationale.¹³

On appeal, appellant’s representative argues that Dr. Reuben’s reports are sufficient to meet her burden of proof or require additional development of the evidence. As discussed, however, his reports lack the necessary rationale to either establish the claim or warrant additional development by OWCP. 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury on February 3, 2010 in the performance of duty.

¹² See *Jean Culliton*, 47 ECAB 728 (1996).

¹³ See *Sandra D. Pruitt*, 57 ECAB 126 (2005); *John W. Montoya*, 54 ECAB 306 (2003).

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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