United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	
DEPARTMENT OF VETERANS AFFAIRS, CARL VINSON VETERANS ADMINISTRATION MEDICAL CENTER, Dublin, GA, Employer	)	**Docket No. 12-301** **Issued: July 2, 2012**

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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 28, 2011 appellant, through her attorney, filed a timely appeal from decisions of the Office of Workers' Compensation Programs (OWCP) dated July 12 and October 14, 2011 that denied her claim. Pursuant to the Federal Employees' Compensation Act[1] (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 in the performance of duty on August 16, 2010.

On appeal appellant's attorney asserts that the decisions are contrary to fact and law.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On August 26, 2010 appellant, then a 45-year-old nursing assistant, filed a traumatic injury claim alleging that at 11:20 a.m. on August 16, 2010 she had lower back pain, stood up to walk from behind a desk to get into a wheelchair, and fell to the floor on both knees due to pain and numbness in both legs. She stopped work that day. The employing establishment controverted the claim, noting that appellant reported to work at approximately 8:00 a.m. on August 16, 2010, after being off work due to a prior accepted lumbar herniated disc.[2] In an August 16, 2010 statement, Tamela White, a coworker, advised that appellant came to her location at 8:45 a.m. and from the time she arrived, complained of low back pain and leg numbness. She indicated that she offered appellant a pillow, and that appellant complained that the pain was getting worse. Ms. White then went to get a wheel chair to assist appellant. She stated that, when appellant got up to get into the chair, her back was to appellant and when she turned around appellant was on the floor on her knees in an awkward position. Ms. White called for help and two nurses came to assist her. She then escorted appellant outside. Jan Baeumel, an administrative support assistant, stated that appellant called her at approximately 11:15 a.m., stating she could not work any longer due to pain and that Ms. White was going to accompany her outside. She related that Ms. White called her at about 11:20 a.m. informing her that appellant had fallen and was going to her personal physician.

In an August 20, 2010 statement, appellant related that when she reported to work on August 16, 2010 she had to walk a distance that caused her back to start hurting and that, after sitting from 8:00 a.m. to 11:20 a.m., she could no longer stand the increased back pain and leg pain and numbness and that when she stood to get in a wheelchair her legs gave out and she fell. She submitted a duty status report dated August 16, 2010 in which Dr. Dwayne Clay, a Board-certified physiatrist, advised that appellant could not work. Dr. Clay stated that her back pain was exacerbated that day due to a fall when her lower extremities gave way due to weakness and severe pain. An August 20, 2010 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated an L4-5 disc herniation that caused a small impression on the left ventral aspect of the thecal sac and left L4 nerve root.

On September 23, 2010 OWCP informed appellant of the type of evidence needed to support her claim. In statements dated September 26 and 27, 2010, appellant again explained that when she returned to work following an accepted lumbar herniated disc condition, her back pain became so severe and she was going to leave but when she stood to get in a wheelchair her legs became numb, gave way and she fell onto both knees. She indicated that the desk chair she was provided on August 16, 2010 was inadequate and that her left knee had begun to give her trouble. Appellant stated that she was now having back injections and that the prolonged sitting, standing and walking on August 16, 2010 caused the pain. In disability slips dated August 26 and September 28, 2010, Dr. Clay indicated that appellant should be out of work until October 30, 2010, or until epidural injections were completed. In duty status reports dated August 26 to October 20, 2010, he indicated that appellant was totally disabled. Dr. Clay noted that appellant reported a history that on her first day back at work, her back and legs went numb

[2] Under OWCP file number xxxxxx204, appellant's claim was accepted for a lumbar sprain and herniated disc at L4-5 with radiculopathy.

and she fell. He diagnosed lumbar radiculopathy and a herniated disc at L4-5. On October 18, 2010 appellant indicated that she was having great pain and swelling in her knees and behind her knees.

By decision dated November 19, 2010, OWCP denied appellant's claim on the grounds that the medical evidence did not establish that the diagnosed condition was causally related to the employment incident of August 16, 2010. On December 9, 2010 appellant requested a review of the written record. In statements she noted her L4-5 disc herniation with nerve root compression and stated that she now had left knee swelling and popping and a torn meniscus in the right knee. Appellant again described the August 16, 2010 fall. In a duty status report dated November 17, 2010, Dr. Clay again advised that appellant could not work. In duty status reports dated January 31 and March 7, 2011, he stated that she could work four hours a day, as tolerated.

In a March 31, 2011 decision, an OWCP hearing representative affirmed the November 19, 2010 decision. On April 9, 2011 appellant requested reconsideration. She stated that she submitted a medical report, but this is not in the case record. In a nonmerit decision dated April 19, 2011, OWCP denied appellant's reconsideration request, noting that a medical report was not forwarded to OWCP.

On June 31, 2011 appellant again requested reconsideration. In an April 26, 2011 report, Dr. Clay noted a history that appellant was originally injured at work on February 1, 2007 and the claim was accepted for a herniated disc at L4-5. He stated that she also developed lower extremity weakness with internal derangement of her right knee. Dr. Clay opined that the fall at work on August 10, 2010 was due to give away weakness from the original injury and the fall exacerbated her radicular symptoms, especially on the left. In duty status reports dated May 2 and June 27, 2011, Dr. Clay indicated that appellant could work four hours a day with restrictions.

In a merit decision dated July 12, 2011, OWCP denied appellant's claim on the grounds that she did not establish that she sustained an injury in the performance of duty. On August 2, 2011 appellant requested reconsideration. She stated that she was told to file a claim for a new injury. Appellant indicated that she had been out of work for eight months, and that both she and Dr. Clay felt this was not a new injury but caused by her previous back condition. In duty status reports dated July 25 and August 22, 2011, Dr. Clay indicated that appellant could work four hours of restricted duty daily and in disability slips dated August 9 and September 19, 2011, he indicated that she could work four hours or less through October 31, 2011.

In an October 14, 2011 decision on the merits of appellant's claim, OWCP denied modification of the prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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, that an injury was sustained 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[4] 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. 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. 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.[5]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant'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 claimant, 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 claimant.[7] 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 causal relationship.[8]

ANALYSIS

The Board finds that appellant did not establish that she sustained a new injury on August 16, 2010. The evidence of record supports that on that day she returned to work at about 8:00 a.m. after an absence due to an accepted herniated lumbar disc with radiculopathy. Appellant complained of increasing low back pain and wanted to go home, and a coworker went to get a wheelchair to assist her getting to her car. When she rose from a desk, her legs were numb and gave way. Appellant fell to her knees. She left work and did not return.

[3] *Gary J. Watling*, 52 ECAB 278 (2001).

[4] 20 C.F.R. § 10.5(ee) (1999, 2011); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *Gary J. Watling*, *supra* note 3.

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[8] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

While it is clear that appellant fell at work on August 16, 2010, both her statements and the medical evidence suggest that the cause of her fall was pain due to her previous work injury.[9] She had only been back at work for a few hours after an absence due to the previous injury when she fell. In statements, appellant indicated that the severe pain from the previous herniated disc caused her to leave work on August 16, 2010, and it was upon arising due to this pain that she fell. She stated that she only filed a claim for a new injury because she was told to do so. Dr. Clay, an attending physiatrist, advised on April 26, 2011 that appellant's fall on August 16, 2010 was due to give way weakness caused by the previously accepted herniated disc. The Board therefore concludes that the evidence does not establish that appellant sustained a new injury or medical condition caused by the fall at work on August 16, 2010.

However, upon return of the case record, OWCP should further develop claim number xxxxxx304 to determine if appellant sustained a recurrence of disability or consequential injury on August 16, 2010 due to the previously accepted herniated disc at L4-5 with radiculopathy accepted under that claim.[10]

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 did not sustain a new injury on August 16, 2010.

[9] *Supra* note 2.

[10] In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, Larson notes that, when the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of direct and natural results and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury. Larson, *The Law of Workers' Compensation* § 1300; *see Charles W. Downey*, 54 ECAB 421 (2003).

ORDER

IT IS HEREBY ORDERED THAT the October 14 and July 12, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 2, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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