United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 13-246**
	)	**Issued: April 19, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Wilmington, DE, Employer	)	

Appearances:
Appellant, pro se
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 13, 2012 appellant filed a timely appeal from the June 15, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 met her burden of proof to establish a traumatic injury in the performance of duty on November 20, 2010.

FACTUAL HISTORY

On December 9, 2010 appellant, then a 44-year-old nurse, filed a traumatic injury claim alleging that on November 20, 2010 she was sitting in a chair which rolled out from under her

[1] 5 U.S.C. § 8101 *et seq.*

causing her to fall and sustain a sacral injury in the performance of duty. She did not stop work at that time.

Appellant filed a recurrence of medical condition claim on February 28, 2011 attributable to the claimed November 20, 2010 injury. She indicated that on January 30, 2011 she was at the nursing station getting ready to sit down, when her coworker moved her chair or the chair rolled on its own and she fell backwards, landing on her back. Appellant indicated that she had low back pain, sciatica, right hip and right groin pain. A March 5, 2011 magnetic resonance imaging (MRI) scan of the lumbar spine read by Dr. Alexander S. Mark, a Board-certified diagnostic radiologist, revealed broad-based disc bulges at L4-L5 and L5-S1 without herniation or stenosis and an "otherwise normal spine." Dr. Mark indicated that there were no findings to explain appellant's right groin pain. An x-ray of the hip read by Dr. Anthony Scola, a Board-certified diagnostic radiologist, was also normal.

In a March 29, 2011 report, Dr. Peter M. Witherell, Board-certified in pain medicine and anesthesiology, noted appellant's history of injury in November 2010. He indicated that she fell flat on her back while working as a nurse. Dr. Witherell examined appellant and diagnosed: mechanical lower back discomfort, status post-traumatic work-related fall, which suggested a primary discogenic etiology; right thigh sensory disturbance with suggestion of meralgia paresthetica, primary right hip discomfort with suggestion of primary soft tissue etiology and determined the right hip was normal. OWCP also received numerous physical therapy notes dated March 4, 5 and 7, 2011.

By letter dated April 6, 2011, OWCP advised appellant that her claim initially appeared to be a minor injury, as there was no lost time from work. However, appellant's claim was reopened as she filed a recurrence. OWCP advised her that the recurrence could not be accepted until the initial injury was accepted. It requested additional factual and medical evidence. OWCP explained that the physician's opinion was crucial to her claim and allotted appellant 30 days to submit the requested information.

OWCP received a February 2, 2011 lumbar spine and hip x-ray from Dr. Scola, which was normal. It received medical records previously submitted. In reports dated April 14 and 28, 2011, Dr. Witherell administered L5-S1 epidural injections for lumbar disc derangement and lumbar radiculopathy. He continued to treat appellant for low back and lower extremity pain. OWCP also received physical therapy notes.

In a statement received by OWCP on May 4, 2011, appellant indicated that on November 20, 2010 she was at work at the nursing station during the shift change. She explained that she got ready to sit down and the chair rolled away and she fell backwards landing on her back. Appellant advised that there were no obvious injuries at the time but she went to the emergency room and returned to work the next day. Several days after the fall, she started noticing right-sided numbness and tingling in her leg, right groin pain and low back pain. Appellant advised that she continued to work but her symptoms worsened. She continued to have low back pain and right groin pain. Appellant also provided statements from her coworkers, Derek Lawson and Clesia Gaines, who confirmed the sequence of events on November 20, 2010. In a statement received by OWCP on May 16, 2011, appellant indicated that she believed her recurrence was just a continuation of her November 20, 2010 injury.

In a May 17, 2011 letter, the employing establishment provided comments which included that between the claimed original injury of November 20, 2010 and her claimed recurrence in February, appellant did not inform it of any problems, "prior to February."

By decision dated June 6, 2011, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that the accepted employment incident caused a diagnosed medical condition.

Appellant requested reconsideration on September 19, 2011. She indicated that she was submitting new medical evidence. Appellant stated that Dr. Witherell did not have the results of diagnostic testing including nerve conduction studies (NCS) and electromyography (EMG) scan. In a November 20, 2010 emergency room report, Dr. Karl Kwok, a Board-certified internist, noted that appellant presented after trying to sit in a chair and having it roll away from her, leading her to fall backwards. He advised that she caught herself with outstretched hands. Dr. Kwok indicated that there was no head trauma, no headache, no nausea/vomiting and no musculoskeletal pain. He listed an impression of a fall and stated that it was "ok to return to duties."

OWCP received several diagnostic reports including a July 1, 2011 right hip MRI scan read by Dr. William Hartz, a Board-certified diagnostic radiologist, which revealed insertional tendinitis of the gluteus tendon, the greater trochanter without tendon tear or gap and no bone abnormalities. A July 7, 2011 left hip MRI scan from Dr. Ryan Geracimos, a Board-certified diagnostic radiologist, showed no acute fracture or significant arthropathy, a small labral tear along the posterior labrum, minimal tendinopathy at the attachment of the gluteus minimus insertion and no abnormal enhancing mass lesion. OWCP also received previously submitted reports and numerous physical therapy reports, nurse's notes and reports from physicians' assistants.

In an August 18, 2011 report, Dr. Franklin Ampadu, a Board-certified internist, noted that he first saw appellant on January 31, 2011 for follow up of injuries sustained at work on November 20, 2010 when she fell on her back as she attempted to sit in a chair. He noted treating her for low back pain with neuropathy and advised that diagnostic testing confirmed S1 radiculopathy, lumbar disc disease and right hip sprain. Appellant continued having low back pain, right groin/hip pain. Dr. Ampadu opined that, "within a degree of certainty, it can be stated that her injury in November 2010 resulted in the above diagnoses."

By decision dated December 6, 2011, OWCP denied modification of the June 6, 2011 decision.

In a letter dated April 16, 2012, appellant requested reconsideration. She argued that her MRI scan from March 2011 was misread. Appellant noted that her orthopedist indicated that there was a direct causal relationship between her described work injury and her symptomatology. On May 22, 2012 she also requested reconsideration and submitted additional evidence. In a January 13, 2012 report, Dr. Witherell noted that he reviewed his records pertaining to appellant's injury and treatment. He advised that it was his "impression that the documentation of my records strongly supports a direct causal relationship between her

described work injury and her presenting symptomatology." Dr. Witherell opined that he would like to see appellant receive the benefits that he believed she was entitled to.

In a February 22, 2012 report, Dr. Eric T. Johnson, a Board-certified orthopedic surgeon, noted that appellant was seen for right hip pain. He noted that she was originally injured on November 20, 2010 when she fell off of a stool at work. Dr. Johnson explained that appellant was seen in an emergency room but did not have much pain at that time. He indicated that her pain worsened with time and she sought treatment in January 2011. Appellant began treatment with Dr. Witherell and underwent about five lumbar spine injections/nerve blocks with him. In the fall of 2011, she was referred to Dr. Johnson. Appellant had a right hip injection under fluoroscopy which gave her 90 percent pain relief but the pain gradually returned. Dr. Johnson noted that she had decreased range of motion of the right hip and tightening of the iliotibial band which could be referring pain into her right hip and leg. There was some improvement with physical therapy. Dr. Johnson diagnosed osteoarthrosis involving the lower leg. He opined that appellant's current complaints were due to her work-related injury from November 20, 2010. Dr. Johnson indicated that "it is my medical opinion that even though she did not complain of right hip pain right away, her current pathology is related to her fall from the chair at work." He explained that he reviewed the MRI scan reports from March 2011 and confirmed that appellant had labral pathology of the right hip, which he also noted in August 2011 after reviewing her studies and examining her. Dr. Johnson explained that labral pathology was "not always a primary diagnosis and may sometimes take several months for the diagnosis to be made, after other causes are ruled out. The patient also denied having right hip pain prior to this fall." Dr. Johnson recommended another right hip injection to alleviate appellant's pain.

By decision dated June 15, 2012, OWCP denied modification of its prior decision.

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[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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. 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.[5] Second, the

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

ANALYSIS

It is not disputed that on November 20, 2010 appellant fell when a chair rolled out from under her as she was sitting down. The Board finds that the first component of fact of injury, the claimed incident, falling from her chair at work, occurred as alleged.

The medical evidence is insufficient to establish the second component of fact of injury, that the work incident caused an injury. The medical reports of record do not establish that this incident caused an injury. The medical evidence contains no reasoned explanation of how the November 20, 2010 employment incident caused or aggravated an injury.[7]

Appellant submitted several reports from Dr. Witherell. They included his March 29, 2011 report in which he noted the history of her fall at work as well as her diagnoses and treatment. Dr. Witherell's April 14 and 28, 2011 reports noted administering epidural injections. However, these reports did not offer any specific opinion on causal relationship. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[8] In his January 13, 2012 report, Dr. Witherell noted that he had reviewed his records and opined that it was his "impression that the documentation of my records strongly supports a direct causal relationship between appellant's described work injury and her presenting symptomatology." However, his opinion is of limited probative value as he did not explain how he arrived at his opinion on causal relationship. Dr. Witherell did not explain how particular documentation in his records supported that a diagnosed condition was caused by the November 20, 2010 work incident. The need for reasoning is particularly important since the most contemporaneous medical evidence, Dr. Kwok's November 20, 2010 emergency room report, released appellant to regular duties and indicated that there was no musculoskeletal pain.[9] Likewise, Dr. Ampadu opined in his August 18, 2011 report that, "within a degree of certainty, it can be stated that her injury in November 2010 resulted" in her diagnosed conditions. However, he did not explain how he arrived at this opinion.

Dr. Johnson noted treating appellant for right hip pain after she was originally injured on November 20, 2010 when she fell off of a stool at work. He explained that she was seen in the emergency room but was not having much pain at that time. Dr. Johnson stated that appellant's pain worsened until she sought treatment in January 2011. He discussed her continuing pain, treatment and findings. Dr. Johnson diagnosed osteoarthrosis involving the lower leg and opined

[6] *Id*.

[7] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[8] *Michael E. Smith*, 50 ECAB 313 (1999).

[9] *See Conard Hightower*, 54 ECAB 796 (2003) (contemporaneous evidence is entitled to greater probative value than later evidence).

that appellant's current complaints were due to the November 20, 2010 work incident. He indicated that "it is my medical opinion that even though she did not complain of right hip pain right away, her current pathology is related to her fall from the chair at work." Dr. Johnson explained that he reviewed the MRI scan reports from March 2011 and confirmed that she had labral pathology of the right hip. He explained that labral pathology was "not always a primary diagnosis" and sometimes took "several months for the diagnosis to be made, after other causes are ruled out." Dr. Johnson also noted that appellant denied having right hip pain prior to this fall." The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, is insufficient, without supporting rationale, to establish causal relation.[10] Furthermore, Dr. Johnson did not explain how osteoarthritis would be related to a fall on November 20, 2010. While he acknowledged that the symptoms took time to appear, he did not sufficiently explain why the symptomology would be delayed and why this would have been caused or aggravated by the November 20, 2010 work incident. Thus, this report is of limited probative value and insufficient to establish the claim.

The record also contains other medical reports including several diagnostic test reports. However, these reports are of limited probative value as they do not contain a specific opinion regarding whether the November 20, 2010 work incident caused a diagnosed condition.[11] OWCP also received physical therapy reports, nurse's notes and reports from physicians' assistants. 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.[12] Only medical evidence from a physician as defined by FECA will be accorded probative value. Health care providers such as nurses, acupuncturists, physicians' assistants and physical therapists are not physicians under FECA. Thus, these reports and notes are not medical evidence and have no weight or probative value.[13]

Consequently, appellant has submitted insufficient 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

[10] *Kimper Lee*, 45 ECAB 565 (1994).

[11] *See supra* note 8.

[12] 5 U.S.C. § 8101(2).

[13] *Jane A. White*, 34 ECAB 515, 518 (1983).

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2013
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