

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

G.L., Appellant)	
)	
and)	Docket No. 13-975
)	Issued: August 12, 2013
DEPARTMENT OF VETERANS AFFAIRS,)	
JOHN D. DINGLE VETERANS)	
ADMINISTRATION MEDICAL CENTER,)	
Detroit, MI, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 18, 2013 appellant, through her representative, filed a timely appeal from the February 7, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her claim for wage-loss compensation. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether the disability for which appellant claims compensation beginning April 21, 2011 is causally related to the December 19, 2010 work injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 19, 2010 appellant, a 46-year-old nurse, sustained a traumatic injury in the performance of duty while turning a patient. She described the nature of her injury as constant pain and intermittent burning sensations in her mid to lower back. OWCP accepted appellant's claim for lumbar sprain.

Appellant received continuation of pay from January 28 to March 13, 2011. OWCP paid compensation for wage loss through April 20, 2011. An April 21, 2011 medical certificate indicated that appellant was able to return to work. Nonetheless she claimed compensation for continuing wage loss.

Dr. Emmanuel N. Obianwu, a Board-certified orthopedic surgeon and second opinion physician, evaluated appellant on April 15, 2011. He reviewed a history of the December 19, 2010 work injury, her treatment and her medical records. Dr. Obianwu related appellant's complaints and described his findings on physical examination. He reviewed x-rays of the lumbar spine, a January 17, 2011 magnetic resonance imaging (MRI) scan of the lumbar spine, and a March 28, 2011 computerized tomography (CT) scan of the abdomen and pelvis: "There was not a single blemish in any of these studies."

Dr. Obianwu diagnosed resolved lumbar strain, overt symptom magnification and abnormal illness behavior. He explained that appellant no longer had residuals from the accepted work-related condition of lumbar strain/sprain, as there were no objective residuals of the December 19, 2010 work injury. All objective conditions had resolved:

"Ongoing lumbar sprain will invariably be marked by tightness of the muscles of the lumbar spine, possibly swelling of the lumbar spine, possibly asymmetry of the pelvis, possibly functional scoliosis and tenderness in the middle of the lumbar spine. None of these was present in my clinical assessment of this woman. I do not know when they resolved, but I am sure of the fact that as of today's examination, lumbar strain no longer exists."

Dr. Obianwu further explained that, during the physical examination, he observed her grimacing, moaning, limping and severe impairment in spinal mobility, which were clear excessive pain behaviors. The findings did not make anatomic sense, an example of which he described. Appellant exhibited overreaction, and it was this abnormal behavior that was preventing her from work. With respect to the element of lumbar sprain, however, she was definitely in a position to return to her regular duties as a nurse because lumbar sprain no longer existed.

Because of appellant's complaint of involvement of both lower extremities, Dr. Obianwu suggested electrodiagnostic studies, which were obtained on April 28, 2011. The studies were normal in both lower extremities. He advised: "This woman should definitely return to her regular duties at this time. No restrictions are called for. No further treatment is indicated."

OWCP provided a copy of Dr. Obianwu's evaluation and a statement of accepted facts to Dr. Gerald Uzansky, appellant's osteopathic family physician, and to Dr. Michael Townsend, an internist, to whom appellant wished to change physicians on June 15, 2011 and June 21, 2011.

OWCP asked Dr. Uzansky and Dr. Townsend to review Dr. Obianwu's examination of appellant and to provide a response that discussed whether the physicians were in agreement or disagreement with the findings. The physicians were given 30 days to respond. No response was received within the allotted time.

In a decision dated July 22, 2011, OWCP denied appellant's claim for compensation beginning April 21, 2011. It found that the weight of the medical evidence rested with Dr. Obianwu and established that she was not disabled for work after April 20, 2012 due to the established work-related medical condition. OWCP noted that in addition to the medical note releasing appellant to return to work on April 21, 2011, she had not provided evidence to support continuing temporary total disability due to the accepted medical condition.

In a December 1, 2011 decision, an OWCP hearing representative affirmed the July 22, 2011 denial of compensation. The contemporaneous objective testing, including a completely normal MRI scan and an electromyogram (EMG), showed absolutely no neuropathic condition. A functional capacity evaluation and second opinion showed severe symptom magnification. Although Dr. Haranath Policherla, a Board-certified neurologist, diagnosed lumbar radiculopathy, he did not discuss how this was so given the testing read by other providers to be normal, nor did he discuss appellant's well-documented symptom magnification.² The hearing representative found that Dr. Obianwu, by contrast, had made a compelling argument for finding no consistent objective evidence of any disabling back condition.

Appellant requested reconsideration and submitted over 100 pages of medical and psychological paperwork, much of which related to an August 2, 2011 fall. A June 6, 2011 nerve conduction study showed bilateral L5-S1 radiculopathy, mild sensory neuropathy, and bilateral moderate peroneal neuropathy at the knee. A November 7, 2011 MRI scan showed degenerative changes within the mid to lower lumbar spine with no exiting nerve root compression and with left-sided foraminal narrowing at L4-5 greater than L3-4.

On August 9, 2012 OWCP reviewed the merits of appellant's case and denied modification of its prior decisions. The evidence submitted did not address how the current diagnoses were related to the December 19, 2010 work injury. "This is necessary given the fact that the contemporaneous evidence fails to establish any other conditions than a lumbar sprain."

Appellant, through her representative, again requested reconsideration. In support thereof, she submitted the December 7, 2012 report of Dr. Policherla, who stated that appellant had been under his care since June 6, 2011. Dr. Policherla related that appellant's diagnoses were bilateral L4-5 radiculopathy, bilateral moderate peroneal neuropathy at the knee, balance dysfunction, and bilateral foot-drop, acquired by work-related injuries that occurred on December 19, 2010 while fulfilling her job duties as a registered nurse. He described the physical demands of appellant's job, which she had performed for over four years. Dr. Policherla explained that, as a result of performing this strenuous physical activity, appellant sustained these traumatic injuries. "Therefore, [appellant] will remain off work until her conditions improve."

² The Board notes that appellant submitted a June 6, 2011 report by Dr. Policherla prior to the hearing.

After detailing appellant's complaints, Dr. Policherla related the results of EMGs performed in his office in June 2011. He found them consistent with a November 7, 2011 MRI scan. "In my medical opinion, the facts of the injury are the direct and proximate cause of the diagnosis that I have cited above. This is based on reasonable medical probability. There may be other causes for these medical problems, but one of the causes is clearly the activities of work I described above."

By decision dated February 7, 2013, OWCP denied modification of its prior decisions. It found that Dr. Policherla did not discuss what happened on December 19, 2010, and thus did not offer an opinion based on a complete and accurate history of injury. Further, many of the diagnoses Dr. Policherla reported were previously determined to be nonexistent on medical examinations performed contemporaneous to the time of injury and subsequent disability.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,³ including that he or she sustained an injury in the performance of duty and that any specific medical condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁴

As used in FECA, the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.⁶

Causal relationship is a medical issue,⁷ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background, 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 established incident or factor of employment.⁸

ANALYSIS

The issue is whether the December 19, 2010 incident at work caused appellant to remain totally disabled for work beyond April 20, 2011. OWCP accepted that the work events of

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

⁶ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987).

⁷ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁸ *B.G.*, Docket No. 13-54 (issued May 24, 2013).

December 19, 2010 caused a disabling lumbar sprain. The second opinion of Dr. Obianwu, the orthopedic surgeon, establishes that this sprain had resolved and was no longer present at the time of his April 15, 2011 examination of appellant. Although OWCP invited appellant's attending physicians, Dr. Uzansky and Dr. Townsend, to address whether they agreed or disagreed with Dr. Obianwu's findings, they did not respond. No physician has attempted to explain that appellant remained disabled for work beyond April 20, 2011 as a result of the accepted lumbar sprain.

The record reflects that the disability for which appellant seeks compensation is causally related to other medical conditions, including a bilateral L4-5 radiculopathy. But as OWCP has not accepted conditions other than a lumbar sprain she has the burden to establish that it is causally related to the December 19, 2010 work injury. Appellant's burden requires the submission of a well-rationalized medical opinion based on a proper factual and medical background.

Appellant has not submitted such evidence. Early radiological, imaging and electrodiagnostic studies of the lumbar spine were found to be unremarkable and normal in appearance. A CT scan on March 28, 2011 noted mild S1 joint degenerative changes, which did not impress Dr. Obianwu as significant. The electrodiagnostic studies he obtained on April 28, 2011 were reported as normal in both lower extremities.

On June 6, 2011 nerve conduction studies obtained for Dr. Policherla, the neurologist, supported bilateral L5-S1 radiculopathy, a mild sensory neuropathy and bilateral moderate peroneal neuropathy at the knee. Dr. Policherla did not explain how the December 19, 2010 incident at work caused or contributed to this condition. He did not describe what happened on December 19, 2010. Dr. Policherla did not address the earlier clinical testing that showed no abnormality apart from a mild S1 joint degenerative change. He attempted to associate the diagnoses with an occupational injury occurring over the span of four years, rather than implicate the specific work incident that occurred on December 19, 2010. Further, Dr. Policherla did not directly address the issue of disability after April 20, 2011.

Medical conclusions unsupported by rationale are of diminished probative value.⁹ Medical conclusions based on inaccurate or incomplete histories are also of little probative value.¹⁰ The Board therefore finds that Dr. Policherla's opinion fails to establish that appellant's disability beginning April 21, 2011 is causally related to the December 19, 2010 work injury.

The Board has reviewed the medical evidence of record, including the 100-plus documents appellant provided to support her first reconsideration request. The Board can find no soundly reasoned medical opinion, based on a proper factual and medical history, explaining how appellant's disability for work beginning April 21, 2011 was causally related to what happened on December 19, 2010. It is not enough that a medical condition be diagnosed or that a disability certificate be completed. No physician has provided a narrative discussion rationally

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

¹⁰ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

explaining how the specific work injury on December 19, 2010 caused the diagnosed medical condition and how the medical condition disabled appellant for work on or after April 21, 2011.

The Board finds that appellant has not met her burden of proof. Accordingly, the Board will affirm OWCP's February 7, 2013 decision.

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 to establish that the disability for which she claims compensation beginning April 21, 2011 is causally related to the December 19, 2010 work injury.

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2013
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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