

FACTUAL HISTORY

On November 9, 2011 appellant, then a 39-year-old nurse, filed a traumatic injury claim alleging that on November 3, 2011 she experienced mid-back pain when she pushed an occupied wheelchair and turned a corner.²

In a November 3, 2011 accident report, the employing establishment stated that appellant complained of an injury after she pushed a patient in a wheelchair and felt a strain in her upper back.

In an undated medical (Form 20/20), Dr. Anna Lerner Angeles, a Board-certified internist, noted that appellant was a registered nurse. On November 3, 2011 she pushed an occupied wheelchair and experienced pain in the mid-back. In a November 4, 2011 prescription slip, Dr. Angeles requested that appellant not return to work due to back pain.

In a November 14, 2011 x-ray report, Dr. Mindy Pfeffer, a diagnostic radiologist, noted that appellant complained of pain on the left side of her ribs for the past two weeks. She observed no evidence of a fracture and no destructive lesions on the ribs.

In a November 16, 2011 prescription slip, Dr. Angeles requested that appellant be excused from work duties until further notice. In a December 16, 2011 prescription slip, she authorized appellant to return to work on December 19, 2011 with restrictions of no heavy lifting or pushing over 20 pounds.

In a January 31, 2012 report, Dr. Thomas J. Dowling, a Board-certified orthopedic surgeon, stated that appellant was a registered nurse. He related a history that on November 3, 2011 she felt a pull in her lower back when she pushed a patient in a wheelchair. Appellant was diagnosed with a sprain and continued to work but experienced increased pain. She took a week off and returned to light duty in mid-December. Dr. Dowling noted no history of prior back problems. Upon examination of the cervical spine, he observed no muscle spasm, spinous process or tenderness. Motion was painless and cervical range of motion was within normal limits. Spurling's sign was absent bilaterally. Examination of the thoracic spine revealed paraspinal tenderness but no spinous process or percussive tenderness. Examination of the lumbar spine demonstrated paraspinal tenderness bilaterally and no pain upon range of motion. Motor strength testing revealed no gross weakness in the lower extremities. Straight leg raise testing and Patrick's tests were negative. Dr. Dowling diagnosed lumbar and thoracic myofascial pain. He recommended a magnetic resonance imaging (MRI) scan examination.

A February 15, 2012 MRI scan of the thoracic spine, was obtained by Dr. Alvand Hassankhani, a Board-certified diagnostic radiologist, who related appellant's complaints of mid and lower thoracic back pain from a twisting injury. Dr. Hassankhani found no evidence of posterior thoracic disc herniation or canal or foraminal narrowing. He observed normal alignment of the thoracic vertebral bodies.

In a March 2, 2012 prescription slip, Dr. Angeles requested that appellant be excused from work due to back pain.

² The record reveals that appellant filed a previous occupational disease claim (File No. xxxxxx873).

On March 12, 2012 appellant submitted claims for leave buyback commencing January 19, 2012.

On March 16, 2012 OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual evidence to establish that she experienced the November 3, 2011 incident. OWCP also requested a medical report, which included dates of examination and treatment, history of injury, description of findings, a medical diagnosis and an opinion, supported by medical rationale, explaining how the alleged employment incident caused or aggravated her medical condition.

In a January 18, 2012 note, Dr. Angeles stated that appellant was examined in her office that day. She recommended that appellant continue light duty.

In a March 2, 2012 report, Dr. Angeles conducted a follow-up examination and related that appellant could not do more than walk due to muscle spasm and that she felt terrible after work. She noted that an MRI scan revealed no herniated discs. Upon examination, Dr. Angeles observed paraspinal muscle spasm on the left, tender to palpation. She diagnosed unspecified back pain and muscle spasm and recommended appellant remain on light-duty status. On March 15, 2012 Dr. Angeles related that appellant was overwhelmed by her facet syndrome and noted her complaints of increased pain. Upon examination, she observed paraspinal muscle spasm on the left, tender to palpation. No clubbing, cyanosis or edema of the extremities was noted. Dr. Angeles diagnosed unspecified myalgia and myositis, muscle spasm, back pain and facet syndrome. She requested that appellant be excused from work until March 16, 2012 due to facet syndrome pain.

In a March 15, 2012 report, Dr. Dowling related appellant's complaints of thoracic and lumbar pain that increased with work over several days. She worked as a registered nurse and had previously missed work due to an injury. Examination of the cervical spine revealed no evidence of ecchymosis, spinous process or paraspinal tenderness. Pain was motionless and range of motion was within normal limits. Upon examination of the thoracic spine, Dr. Dowling observed paraspinal tenderness but no spinous process or percussive tenderness. Examination of the lumbar spine showed paraspinal tenderness bilaterally but no evidence of ecchymosis, edema or erythema. Motor strength testing and reflexes were within normal limits. Straight leg raise testing and Patrick's test were both negative. Dr. Dowling diagnosed thoracic and lumbar myofascial and facet syndrome. He authorized appellant to return to light duty on March 15, 2012 with restrictions of no bending/twisting, lifting, or prolonged positioning.

In an April 4, 2012 report, Dr. Angeles stated that she had examined appellant after a November 3, 2011 injury at work when she pushed an occupied wheelchair. She noted that in January appellant began to develop back spasms which affected her sleep. Dr. Angeles referred her to Dr. Dowling for evaluation and he diagnosed facet syndrome.

In a decision dated April 18, 2012, OWCP denied appellant's claim finding insufficient evidence to establish fact of injury. It determined that she did not provide sufficient evidence to establish that the November 3, 2011 incident occurred as alleged or that she sustained any diagnosed condition as a result of the alleged incident.

On January 11, 2013 appellant, through counsel, submitted a request for reconsideration. Counsel described the November 3, 2011 employment incident and stated that she sustained multiple work-related symptoms, including thoracolumbar pain with radiation to her bilateral lower extremities as a result of the incident. He contended that OWCP should have accepted that the November 3, 2011 incident occurred as the employing establishment did not controvert her claim and there was no reason to challenge the claim. Counsel also contended that the medical evidence was conclusive enough to establish a causal relationship between the employment incident and appellant's disabling condition.

In an April 13, 2012 report, Dr. Dowling related appellant's complaints of constant thoracic and lumbar pain with radiation into the bilateral lower extremities stemming from a November 3, 2011 work-related injury. Upon examination of the thoracic spine, he observed paraspinal spasm and tenderness, but no spinous process or percussive tenderness. Examination of the lumbar spine revealed paraspinal spasm and tenderness bilaterally. Motion was painful during axial extension, flexion and bilateral axial rotation. Straight leg raise testing, Femoral stretch and Patrick's tests were negative. Dr. Dowling diagnosed facet syndrome and stated that appellant was not able to return to work. He recommended that she continue with chiropractic treatment and pain medication.

In a May 22, 2012 report, Dr. Joseph T. Sanelli, Board-certified in physical medicine and rehabilitation, related appellant's complaints of constant thoracic and lumbar pain with radiation into the right lower extremity. It increased with prolonged positions and activities and improved with rest. Upon examination of the thoracic spine, Dr. Sanelli observed paraspinal spasm and tenderness with no spinous process or percussive tenderness. Examination of the lumbar spine revealed no evidence of ecchymosis, edema, erythema or deformity. Dr. Sanelli observed paraspinal spasm and tenderness bilaterally. Straight leg raise testing, femoral stretch and Patrick's tests were negative. Dr. Sanelli observed that a February 15, 2012 MRI scan of the thoracic spine was normal for age. He diagnosed facet syndrome, discogenic syndrome and lumbar and thoracic myofascial. Appellant also submitted various physical therapy progress notes dated from March 22 to April 28, 2012.

In a December 7, 2012 report, Dr. Sanelli stated that he initially examined appellant on April 13, 2012 for complaints of thoracolumbar and bilateral lower extremity pain following a November 3, 2011 work-related injury. Appellant continued to complain of right-sided thoracic pain with spasms in the thoracic and lumbar regions. Dr. Sanelli reviewed her history, including his clinical course of treatment and noted that a February 15, 2012 MRI scan of the thoracic spine revealed no posterior thoracic disc herniation, canal or foraminal narrowing. Upon examination of her thoracic spine, he observed paraspinal spasm and tenderness with no spinous process or percussive tenderness. Examination of the lumbar spine demonstrated paraspinal spasm and tenderness bilaterally. Motion was painful, but range of motion was within normal limits. Motor strength testing revealed no gross weakness in the lower extremities and reflexes were within normal limits. Dr. Sanelli diagnosed lumbar herniated nucleus pulposus L3-4 and L4-5, lumbar stenosis and sciatica. He concluded that based on the history given by appellant and her clinical examination, there was a causal relationship between the diagnosis and the injury of record.

By decision dated February 21, 2013, OWCP modified the April 18, 2012 denial decision. It found that the factual evidence was sufficient to establish that the November 3, 2011

incident occurred as alleged. OWCP denied the claim finding the medical evidence failed to establish that appellant sustained a back condition causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence⁴ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether “fact of injury” has been established.⁶ There are two components involved in establishing the fact of injury. 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 employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.⁹

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.¹⁰ 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.¹¹ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.¹²

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁸ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹² *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

Appellant alleged that on November 3, 2011 she sustained a back injury when she pushed an occupied wheelchair and turned a corner at work. OWCP accepted that the November 3, 2011 incident occurred as alleged but found that the medical evidence was insufficient to establish that she sustained a back condition causally related to the accepted incident. The Board finds that appellant failed to meet her burden of proof to provide sufficient medical evidence to establish that she sustained injury as a result of the November 3, 2011 employment incident.

Appellant was initially treated by Dr. Angeles. In medical reports and forms dated from November 4, 2011 to April 4, 2012, Dr. Angeles described that appellant was a registered nurse who experienced mid-back pain on November 3, 2011 when she pushed an occupied wheelchair at work. She requested that appellant remain off work in November 2011 and authorized appellant to return to limited duty on December 19, 2011. In March 2 and 15, 2012 reports, Dr. Angeles stated that appellant could not do more than walk due to muscle spasm and that she felt terrible when she comes home from work. Upon examination, she observed paraspinal muscle spasm on the left, tender to palpation. Dr. Angeles diagnosed unspecified back pain, muscle spasm and facet syndrome. The Board notes that she accurately described the November 3, 2011 incident and provided findings on examination. Dr. Angeles did not provide a firm medical diagnosis or statement on causal relation. Pain, is generally a description of a symptom and not considered a firm medical diagnosis.¹³ The Board finds that Dr. Angeles failed to provide a firm medical diagnosis of any back condition. In addition, Dr. Angeles also did not provide any opinion on the cause of appellant's back condition. She simply recounted the November 3, 2011 incident as described by appellant but she did not explain how her back pain was work related.¹⁴ The Board has held that 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.¹⁵ Thus, the Board finds that Dr. Angeles's opinion is insufficient to establish appellant's claim.

Similarly, the reports of Drs. Dowling, Pfeffer and Hassankhani are also of limited probative value as they provided no diagnosis, other than lumbar and thoracic myofascial pain or an opinion on the issue of causal relationship. In a November 14, 2011 x-ray report, Dr. Pfeffer noted no evidence of a fracture and no destructive lesions on the ribs. In a February 15, 2012 MRI scan of the thoracic spine, Dr. Hassankhani observed normal alignment of the thoracic vertebral bodies. Neither physician provided an opinion on the cause of appellant's back condition. As noted, medical evidence that does not offer any opinion on the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁶ The Board finds that Drs. Dowling's, Pfeffer's and Hassankhani's reports are insufficient to establish that appellant sustained a back condition as a result of the November 3, 2011 employment incident.

¹³ *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

¹⁴ *See C.K.*, Docket No. 13-504 (issued April 25, 2013).

¹⁵ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁶ *Id.*

Appellant was also examined by Dr. Sanelli. In a May 22, 2012 report, Dr. Sanelli related her complaints of constant thoracolumbar pain with radiation into the right lower extremity following a November 3, 2011 work-related injury. Examination of the thoracic spine revealed paraspinal spasm and tenderness with no spinous process or percussive tenderness. Examination of the lumbar spine demonstrated no evidence of ecchymosis, edema, erythema or deformity but Dr. Sanelli found paraspinal spasm and tenderness bilaterally. Straight leg raise testing, femoral stretch and Patrick's tests were negative. Dr. Sanelli diagnosed facet syndrome, discogenic syndrome and lumbar and thoracic myofascial pain. In a December 7, 2012 report, he reviewed appellant's history, including the clinical course of treatment. Dr. Sanelli noted that a February 15, 2012 MRI scan of the thoracic spine revealed no posterior thoracic disc herniation, canal or foraminal narrowing. He provided examination findings similar to the May 22, 2012 report and diagnosed lumbar herniated nucleus pulposus L3-4 and L4-5, lumbar stenosis and sciatica. Dr. Sanelli concluded that based on the history given by appellant and her clinical examination, there was a causal relationship between the diagnosis and the injury of record. The Board notes that while he opined that the accepted incident was causally related to appellant's alleged back condition, he did not provide an adequate explanation for how her back condition was caused by the November 3, 2011 employment incident. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁷ Dr. Sanelli failed to describe the November 3, 2011 incident or address how pushing an occupied wheelchair caused or contributed to a herniated disc condition.¹⁸ The Board finds that his opinion is of limited probative value on the issue of causal relationship because he does not explain how the November 3, 2011 employment incident caused appellant's back condition.

Appellant also provided progress notes from a physical therapist. Section 8102(2) of FECA, however, 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 State law. As physical therapists are not physicians as defined under FECA, their medical opinions regarding diagnosis and causal relationship are of no probative value.¹⁹

On appeal, counsel alleges that the medical evidence supported appellant's claim that her disabling condition was causally related to the November 3, 2011 employment incident. He noted that a full and accurate history of the work incident was described in the June 31, 2012 report and Dr. Angeles's April 4, 2012 report. As previously noted, however, while Dr. Lerner accurately described the November 3, 2011 incident, she does not provide a compensable medical diagnosis or opinion on causal relationship. Causal relationship is a medical issue that can only be shown by reasoned medical opinion evidence that is supported by medical rationale.²⁰ Appellant failed to provide such sufficient medical evidence in this case. Thus, the

¹⁷ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (February 6, 2009); *see also C.B.*, Docket No. 13-694 (issued May 29, 2013).

¹⁸ *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001) (the Board has held that medical reports must be based on a complete and accurate factual and medical background).

¹⁹ 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

²⁰ *Supra* note 9.

Board finds that she did not meet her burden of proof to establish that she sustained a diagnosed back condition causally related to the November 3, 2011 employment incident.

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 establish that she sustained a back injury on November 3, 2011 in the performance of duty.²¹

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2013
Washington, DC

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

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

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

²¹ The Board notes that the record contains a claim for disability compensation for the period January 13 to March 15, 2012. As OWCP has not issued a decision regarding this claim, the Board has no jurisdiction to address appellant's claim for disability compensation.