

FACTUAL HISTORY

On October 8, 2011 appellant, then a 33-year-old nursing assistant, filed a traumatic injury claim alleging that on that date she injured her lower back, neck and right shoulder while helping another nurse stop a patient from falling.

Appellant received treatment at the employing establishment's clinic on October 8, 2011. She provided a history of "low back pain with radiation to the right knee following helping a patient from [a] fall."

On October 11, 2011 Dr. Barry Fisher, a Board-certified internist, noted that appellant experienced radiating pain greater on the right side after moving a patient at work. He diagnosed acute lumbar back pain.

On October 18, 2011 Dr. Sudarshal Chatterjee, a Board-certified internist, found that appellant could resume work on that date. On October 20, 2011 he listed work restrictions of lifting no more than five pounds.

By letter dated November 7, 2011, OWCP requested that appellant submit additional factual and medical information, including a detailed report from her attending physician explaining the relationship between the October 8, 2011 incident and a diagnosed condition.

By letter dated November 16, 2011, the employing establishment controverted the claim, noting that the witness statements were inconsistent. In an October 8, 2011 statement, Jane Wageman-Johnson, a nurse, indicated that on that date appellant notified her that she was injured lowering a patient to the floor. She questioned why appellant was performing any lifting as she was working light duty as a result of a prior injury. Nurse Wageman-Johnson spoke with Rita Asiegburnam, also a nurse, who related that she held the majority of patient's weight and appellant only held the patient's hand. In a statement dated October 14, 2011, July A. Bell, a nurse, related that she witnessed Ms. Asiegburnam and appellant "supporting a patient almost on the floor."

In a report dated November 3, 2011, Dr. Atul L. Bhat, a Board-certified physiatrist, evaluated appellant "in an urgent fashion with chief complaints of severe right more so than left lower lumbar as well as lower extremity pain." He noted that she experienced an additional lumbar injury on October 8, 2011 when she "was lifting a heavy patient at work and injured her back while preventing the patient from falling and hitting the floor." Dr. Bhat diagnosed "[s]ymptoms of severe low back as well as lower extremity pain which could be due to an acute lumbar disc herniation or referred pain from a[n] S1 joint involvement or referred pain from a facet joint involvement *per se*." He recommended a magnetic resonance imaging (MRI) scan study of the lumbar spine. In a November 3, 2011 work restriction evaluation, Dr. Bhat found that appellant was disabled from employment.

On November 23, 2011 Dr. Bhat related that, after reviewing his reports from May 12, 2011, it appeared that appellant had been released to her "preinjuries duties with regard to her lumbar spine." He related that after an injury on May 31, 2011 she had left lumbar tenderness to palpation. Dr. Bhat recommended a new MRI scan study.

By decision dated December 16, 2011, OWCP denied appellant's claim on the grounds that she did not establish an injury in the performance of duty. It determined that the medical evidence was insufficient to establish that she sustained a diagnosed condition causally related to the October 8, 2011 work incident.

In a December 17, 2011 work restriction evaluation, Dr. Bhat found that appellant could not work due to severe leg pain on the right after an October 8, 2011 work injury. He advised that she could not return to work until after an MRI scan study.

On December 21, 2011 appellant, through her attorney, requested a telephone hearing before an OWCP hearing representative. In a statement received on January 4, 2012, she described the October 8, 2011 work incident.

At the telephone hearing, held on March 28, 2012, appellant related that she injured her neck in July 2009 and her shoulder and back in 2010 working for the employing establishment. She sustained another injury in May 2011 but OWCP denied her claim. Appellant related that she had problems with pain in her back and shoulder prior to October 8, 2011 but that her symptoms increased after that date. She indicated that OWCP denied her claim because she did not have a diagnosis but that she needed an MRI scan study to get a diagnosis.

By letter dated April 10, 2012, the employing establishment challenged appellant's claim based on factual inconsistencies.

In a decision dated May 17, 2012, the hearing representative affirmed the December 16, 2011 decision. She found that appellant established that on October 8, 2011 she assisted a nurse with moving a patient from a bed to the floor. The hearing representative determined, however, that the medical evidence was insufficient to show that appellant sustained a diagnosed condition due to the identified work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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.³ 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.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,

² *Id.*

³ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁴ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

by a preponderance of the reliable, probative and substantial evidence.⁵ 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.⁶ 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.⁷

ANALYSIS

Appellant alleged that she sustained an injury to her back on October 8, 2011 while assisting a nurse with lowering a patient who was falling to the floor. While the employing establishment contended that there were factual inconsistencies, she reported her injury immediately after the incident and sought medical treatment that same date. Ms. Bell indicated that she witnessed appellant and another nurse supporting a patient nearly on the floor. The Board finds that there are no inconsistencies sufficient to cast doubt that the October 8, 2011 employment incident, that of appellant sustaining an injury assisting another nurse to prevent a patient from falling, occurred as alleged.⁸ The issue, consequently, is whether the medical evidence establishes that she sustained an injury as a result of this incident.

The Board finds that appellant has not established that the October 8, 2011 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.⁹

In a report dated October 11, 2011, Dr. Fisher discussed appellant's complaints of radiating pain more on the right side after she moved a patient at work. He diagnosed acute lumbar back pain. Low back pain, however, is a description of a symptom, not a clear diagnosis of a medical condition and does not constitute a basis for the payment of compensation.¹⁰

On October 18, 2011 Dr. Chatterjee opined that appellant could return to work. On October 20, 2011 he listed work restrictions. Dr. Chatterjee, however, did not discuss the history of injury, provide a diagnosis or address causation. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹¹

⁵ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ *Id.*

⁸ See *Betty J. Smith*, 54 ECAB 174 (2002) (an employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim).

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

¹⁰ *Robert Broome*, 55 ECAB 339 (2004).

¹¹ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conrad Hightower*, 54 ECAB 796 (2003).

On November 3, 2011 Dr. Bhat examined appellant for severe pain in the lower extremities, greater on the right side. He discussed her history of an additional injury to her lumbar spine on October 8, 2011 after she tried to keep a patient from falling. Dr. Bhat diagnosed severe lower extremity and low back pain due to an acute disc herniation, referred pain from the S1 joint or facet joint. He did not provide a firm diagnosis of appellant's condition or fully explain how the described work incident caused or aggravated any condition. Without a firm diagnosis supported by medical rationale, the report is of little probative value.¹²

On November 23, 2011 Dr. Bhat related that appellant had been released to her preinjury work duties after a prior lumbar injury but sustained a new injury on May 31, 2011. As he did not address the October 8, 2011 injury, his report is of diminished probative value.

In a December 17, 2011 work restriction evaluation, Dr. Bhat found that appellant could not work due to severe leg pain on the right after an October 8, 2011 work injury. He opined that she was disabled from employment pending an MRI scan study. Dr. Bhat, however, did not provide a diagnosis or address causal relationship. A physician must provide a narrative description of the employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.¹³

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed condition and her employment.¹⁴ Appellant must submit a physician's report in which the physician reviews those factors of employment identified as causing her condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.¹⁵ She failed to submit such evidence and therefore failed to discharge her burden of proof.

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 had not established that she sustained an injury on October 8, 2011 in the performance of duty.

¹² See *Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician's opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

¹³ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁴ *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁵ *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 18, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board