United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 13-723**
	)	**Issued: July 22, 2013**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMIISTRATION, Coatesville, PA, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 6, 2013 appellant, through her attorney, filed an appeal of a merit decision of the Office of Workers' Compensation Programs dated September 26, 2012 denying 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 has established that she sustained an injury causally related to her employment activities in January 2010.

FACTUAL HISTORY

On March 15, 2010 appellant, then a 50-year-old health aid, filed an occupational disease claim in which she alleged aggravation of prior work injuries to her brain, neck and back as a

[1] 5 U.S.C. § 8101 *et seq.*

result of employment activities in a modified health aid position she held for one week in January 2010. By decision dated November 25, 2011, the Board set aside OWCP's December 21, 2010 decision denying her occupational disease claim and remanded the file for further development of the medical evidence.[2] The Board noted that appellant had two prior claims, a July 16, 1999 claim for a back injury File No. xxxxxx749, which was accepted for lumbosacral sprain and a March 27, 2000 traumatic injury claim File No. xxxxxx477, which was accepted for concussion and contusion of the head, which needed to be consolidated with the current claim File No. xxxxxx435.[3]

The relevant facts reflect that, under subsidiary File No. xxxxxx477, Dr. Milind Kothari, a Board-certified neurologist and impartial medical specialist, opined that appellant could return to work limited duty. In a March 23, 2009 report, he found no focal abnormalities present on her neurological examination.[4] Dr. Kothari opined that appellant was capable of gainful employment. In a May 12, 2009 estimated physical capacities report, he opined that she could work light duty with restrictions and increase the amount of work as tolerated. Dr. Kothari opined that, in an eight-hour day, appellant could stand, sit, sit/stand, walk and drive one to three hours; occasionally bend, squat and climb, frequently reach above shoulder, kneel, crawl and use feet. No restrictions were provided for simple grasping, fine grasping and fine manipulation.

Based on Dr. Kothari's work restrictions, the employing establishment offered a modified health aid position. Physical requirements included pushing, pulling and lifting no more than 20 pounds and sitting and walking for one to three hours. Climbing, squatting and kneeling were listed as occasional and no restrictions were provided for simple grasping, fine grasping or fine manipulation. Duties included intermittent sitting, standing and walking.

In an October 30, 2009 report, Dr. Clem Ciccarelli, a Board-certified family practitioner, advised that appellant had left thoracic outlet syndrome; bilateral carpal tunnel syndrome; recurring left C6, C7 and C8 paresthesia and radiculopathy; L5/S1 radiculopathy and paresthesia on the left side and cognition problems. He opined that she was not able to engage in any gainful employment. Dr. Ciccarelli reviewed a copy of the health aide job description and felt that appellant could not do the principle duties and responsibilities. He stated that maybe she could cart less than two to three hours a day.

In an October 30, 2009 letter, Dr. Ciccarelli stated that appellant could not carry out any of the jobs listed on the modified offer completely. He stated that there was a high risk of exacerbation of the thoracic outlet where she would need a surgery. Appellant would also require surgery of her cervical and lumbar spine area if she exacerbates this by going to work. Dr. Ciccarelli noted that she has significant neurological deficits both in thoracic outlet with

[2] Docket No. 11-1054 (issued November 25, 2011).

[3] In a December 13, 2004 decision, the Board reversed OWCP's February 18, 2004 decision in File No. xxxxxx477 terminating appellant's compensation benefits. Docket No. 04-1775 (issued December 13, 2004).

[4] Specifically, appellant had no evidence of any focal neuropathy, brachial plexopathy or cervical or lumbar radiculopathy and no evidence of neurogenic thoracic outlet syndrome. Dr. Kothari noted that her Doppler studies indicated suggestion of vascular thoracic outlet syndrome, but opined that this was not a result of the sequelae of the March 2000 injury.

showing paresthesia in her arm and decreased pulsation of lifting her arm up, backwards. Appellant also has L5/S1 parasthesia on the left side, more than right. Dr. Ciccarelli also stated that she has cognitive dysfunction. He indicated that, the neurological deficits both in appellant's cervical neck and lumbar spine area in the lower extremity, the carpal tunnel and the thoracic outlet were unchanged over the years.

On January 15, 2010 Dr. Ciccarelli took appellant off work indefinitely. He diagnosed exacerbation of the left thoracic outlet, with paraesthesia and cold extremity; decreased pulse on the C5, C6 and C7 distribution left more than right with head turning and with paraesthesia of the arm, forearm and fingers; lumbar L5/S1 left more than right; pain/paraesthesia on left side with weakness in the left upper extremity due to pain and numbness and nerve impingement. Dr. Ciccarelli opined that all the diagnosed conditions were related to her March 27, 2000 injury and appellant's current exacerbation comes from her recent job working conditions.

In a January 20, 2010 report, Dr. Scott M. Fried, an osteopath, provided a detailed history of the March 27, 2000 work injury. He noted that in January 2010 appellant returned to work activities doing modified duty as a health aid which required lifting and regular upper extremity use. Appellant noted significant exacerbation of her symptoms and recurrence of her problems. Dr. Fried advised that Dr. Ciccarelli appropriately took her out of work on January 15, 2010 and indicated that exacerbation of her symptoms has calmed down somewhat since she stopped work. He opined that appellant has a substantial brachial plexopathy on the left secondary to the work injury as well as ongoing evidence of head injury and postconcussion syndrome with tension and memory deficit. Dr. Fried opined that she continues to exhibit ongoing issues secondary to those neuropathies, including overuse issues and low back dysfunction.

Appellant testified on November 4, 2010 that she went out of work for injuries sustained on March 27, 2000 under File No. xxxxxx477. She did not return until January 2010, when she accepted a modified health aid position. Appellant indicated that she attended a New Employee Orientation for a couple of days. She started working her position for four hours on January 7, 2010 and full time on January 8, 2010. Appellant was off work for the weekend on January 9 and 10, 2010. She returned to work on January 11, 2010 and worked until January 12, 2010. Appellant described her duties as filling water pitchers, sometimes carrying two at a time. She additionally restocked medical supplies, which she indicated involved reaching, including overhead reaching and bending and delivering and collecting trays. Appellant also wrote on folders, which she stated were flimsy and difficult to write on. She stopped work on January 13, 2010. Appellant further testified that she was trying to learn the electric piano to assist with cognitive function and use of her hands.

In a November 16, 2010 report, Dr. Ciccarelli indicated that he had been following appellant since her July 16, 1999 work injury. He reported symptomatology prior to the claimed injury and recommended that she stop working as she still had several conditions. Dr. Ciccarelli indicated that she went back to work against medical advice on January 4, 2010 and she tried to work 8:00 a.m. to 4:30 p.m. He indicated that, when appellant saw him on January 15, 2010, she was having more pain down her legs, more pain in her arms and more pain tilting her head. Dr. Ciccarelli opined that she had an exacerbation of her workers' compensation injury related to postconcussion injury. He reviewed appellant's job situation and opined that any amount of weight and lifting her arms up repetitively, any movement above her head even five pounds or

lifting anything up would cause paresthesia as she has a severe thoracic outlet injury that has never completely recovered. Dr. Ciccarelli noted that the meal tray movement, restocking supplies and carrying folders and doing ice pitchers would cause a problem. He indicated that appellant's increased symptoms were aggravated by work as both her cervical neck and lumbar back got worse. Dr. Ciccarelli also opined that her postconcussion symptoms were aggravated by sitting during orientation and sitting at a computer and controlling her hands and finger with a mouse and keyboard caused muscle fatigue and mental fatigue. He opined that appellant was unable to do work at all with her upper extremities. Dr. Ciccarelli stated that she was completely disabled prior to going back to work and was now more disabled than before. He opined that appellant could not work at any job based on her physical examination because any use of her upper and lower extremities would only aggravate a chronic ongoing condition. In a November 17, 2010 report, Dr. Ciccarelli reiterated that her return to work exacerbated her work-related conditions.

By decision dated March 30, 2012, OWCP denied the claim on the basis that the medical evidence did not establish that appellant's diagnosed conditions were causally related to factors of employment.

On April 4, 2012 appellant, through her attorney, requested a hearing before an OWCP hearing representative, which was held on July 11, 2012. Appellant's attorney argued that the medical evidence was sufficient to establish that her return to work in January 2010 significantly aggravated her prior work injuries.

In a June 14, 2012 report, Dr. Ciccarelli reported appellant's symptomology prior to the claimed January 12, 2010 injury. He noted that she was disabled from March 2000. Dr. Ciccarelli noted that appellant still had symptoms of paresthesias but they had lessened somewhat when she decided against medical advice to return to work. He indicated that she returned to work on January 4, 2010 and worked until January 8, 2010. Appellant was off work January 9 and 10, 2010 but returned to work on January 11, 2010. On January 12, 2010 she contacted his office for an appointment and was seen on January 15, 2010. Dr. Ciccarelli indicated that appellant attempted to keep working. Appellant's duties were noted as filling pitchers, carrying two at a time, reaching trays, restocking supplies and performing overhead bending and reaching. She collected and delivered trays and stacked them. Appellant also had to write on folders and write things down. She could not do any work after two days because of the repetitive nature of what was going on. Dr. Ciccarelli noted the position description of appellant's duties. He opined that she had an exacerbation of her brachial plexus and that was why she was sent to Dr. Fried on January 20, 2010. Dr. Ciccarelli stated that Dr. Fried concurred that appellant's symptomatology had now exacerbated down her arms and legs and, because of the stress of the pain, postconcussion mentation changes also occurred. He opined that she aggravated a chronic ongoing condition that has now gotten worse. The increased physical activity at work including lifting worsened her fibromyalgia pain and decreased her cognition as well. At times the pain in her right neck and shoulder, low back and sciatica were debilitating. Dr. Ciccarelli opined that appellant's activities at work differed from her activities at home because of the repetitive use of her arms at work that was done for over an hour at a time, which in turn exacerbated her thoracic outlet syndrome. He described her work activities of lifting, reaching, carrying and pushing and noted that she could limit the time spent performing repetitive activities at home, but not at work.

By decision dated September 26, 2012, an OWCP hearing representative affirmed the March 30, 2012 decision. The hearing representative found that appellant returned to work on January 4, 2010 and attended two full days of new employee orientation. On January 6, 2010 appellant went to the employee health unit and returned to orientation class at 11:00 a.m. and completed the day. She was on sick leave for four hours on January 7, 2010 and then worked from 12:00 p.m. until 4:30 p.m. Appellant worked eight hours a day on January 8, 11, 12 and 14, 2010 and requested annual leave for January 13, 2010. She was scheduled off for January 15, 2010 and called her supervisor to advise she would not be returning to work on the advice of her physician.

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 filed within 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.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.[6]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[7] In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[8]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[9] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[10] The belief of the claimant that a condition was caused or aggravated by her

[5] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton, id*.

[7] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[8] *Linda S. Jackson*, 49 ECAB 486 (1998).

[9] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

[10] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

employment is insufficient to establish a causal relationship.[11] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA.[12]

ANALYSIS

Based on Dr. Kothari's referee examination, the employing establishment offered appellant a modified health aide position, which she accepted despite Dr. Ciccarelli's objections that she would risk an exacerbation of her thoracic outlet syndrome and/or her cervical or lumbar spine conditions. Appellant returned to work on January 4, 2010 and attended two full days of a New Employee Orientation. She worked from 12:00 p.m. until 4:30 p.m. on January 7, 2010 and eight hours a day on January 8, 11, 12 and 14, 2010. Appellant stopped work on January 15, 2010. She argued before OWCP and on appeal that the medical evidence is sufficient to establish that her return to work in January 2010 significantly aggravated her prior work injuries. The medical evidence of record, however, is insufficient to establish that appellant's diagnosed conditions were exacerbated by her modified health aid position or the short period of time she worked in January 2010.

In his January 20, 2010 report, Dr. Fried noted that appellant retuned to a modified job and had an exacerbation of her symptoms and recurrence of her problems. He provided a history of her work-related March 2000 injury and medical care. Dr. Fried opined that appellant has a substantial brachial plexopathy on the left secondary to the work injury as well as ongoing evidence of head injury and postconcussion syndrome with tension and memory deficit. He opined that she continues to exhibit ongoing issues secondary to those neuropathies, including overuse issues and low back dysfunction. Dr. Fried, however, failed to provide a medical opinion relating any or all of these conditions to appellant's January 2010 return to work. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[13] While Dr. Fried stated that appellant had an exacerbation of her symptoms and recurrence of her problems after her return to a modified job, he did not provide any medical reasoning explaining how the established employment factors caused or contributed to the exacerbation of her conditions. Without medical reasoning explaining how the established employment factors caused or contributed to her conditions, his January 20, 2010 report is insufficient to meet her burden of proof.[14]

Several reports were received from Dr. Ciccarelli. In his January 15, 2010 report, Dr. Ciccarelli took appellant off work. He advised that she had an exacerbation of the left thoracic outlet and cervical and lumbar symptoms that were related to her 2000 work injury and her recent job conditions. However, Dr. Ciccarelli failed to explain how the employment factors caused or contributed to appellant's conditions. The Board has held that a medical opinion not

[11] *Charles E. Evans*, 48 ECAB 692 (1997).

[12] 20 C.F.R. § 10.303(a).

[13] *See K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[14] *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

supported by medical rationale is of little probative value.[15] Without medical reasoning explaining how the established employment factors caused or contributed to appellant's conditions, Dr. Ciccarelli's January 15, 2010 report is insufficient to meet her burden of proof.[16] In his subsequent reports, Dr. Ciccarelli noted the duties she performed during her short time as a modified health aid and described how her work activities exacerbated her thoracic outlet syndrome, cervical and lumbar radiculopathy and her concussion syndrome. In his last report of June 14, 2012, he provided a detailed explanation as to how appellant's activities at work differed from her activities of daily living as she could limit the time spent performing repetitive activities at home, but could not do so at work. Dr. Ciccarelli explained that the repetitive use of her arms at work that was done for over an hour at a time was as well as the increased physical activity exacerbated her thoracic outlet syndrome, worsened her fibromyalgia and decreased her cognition. He indicated that at times the pain in her right neck and shoulder, low back and sciatica were debilitating. While pain due to an employment-related condition can be the basis for the payment of compensation for disability,[17] Dr. Ciccarelli provided no objective evidence to support that appellant's condition materially changed after being in employee orientation for two days and working for four and a half days. Rather, his opinion that her condition was exacerbated is based solely on her pain complaints. Appellant has complained of pain, both prior to and after her return to work. Dr. Ciccarelli did not provide any objective medical findings to support her disability but merely related that she experienced increased pain which was dehabilitating. Because the record fails to contain objective medical findings to support that appellant was disabled from her modified position, the Board finds that his November 16 and 17 and June 14, 2012 reports are insufficient to establish her burden of proof.

Appellant and her counsel argued that her conditions were exacerbated by the health aide position. However, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[18] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[19] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. For the reasons noted above, appellant failed to submit sufficient medical evidence to rectify the deficiencies in her claim.

On appeal, appellant's counsel has also asserted that appellant has established a recurrence of disability. The Board notes that the appeal before the Board concerns a claim for occupational disease, due to an alleged aggravation of conditions resulting from work activities following a January 11, 2010 return to work, not a claim of recurrence of disability. OWCP's procedures provide that if a claim of recurrence of disability is made within 90 days or less

[15] *Caroline Thomas*, 51 ECAB 451 (2000).

[16] *Supra* note 14.

[17] *Barry C. Peterson*, 52 ECAB 120 (2000).

[18] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[19] *Id.*

following the first return to duty, the focus is on disability, rather than causal relationship.[20] In the present case, however, the issue of recurrence of disability is not before the Board.

The Board finds that appellant failed to provide sufficient medical evidence to establish that she sustained an aggravation of her prior work injuries following a return to modified duties in January 2010.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an aggravation of her prior work injuries following a return to modified duties in January 2010, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated September 26, 2012 is affirmed.

Issued: July 22, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

[20] *See supra* note 7 at Chapter 2.1500(6)(a) (1995).