

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

T.G., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS BENEFITS ADMINISTRATION,
New Orleans, LA, Employer**

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**Docket No. 13-76
Issued: March 22, 2013**

Appearances:
Debra Hauser, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 12, 2012 appellant, through her representative, filed a timely appeal from July 20 and August 24, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 that she sustained an injury in the performance of duty on October 25, 2010.

FACTUAL HISTORY

On October 27, 2010 appellant, then a 36-year old Veterans Administration (VA) claims examiner, filed a traumatic injury claim (Form CA-1) alleging that on October 25, 2010 she

¹ 5 U.S.C. § 8101 *et seq.*

sustained a back strain when she was placing a file in a cabinet and the entire cabinet fell forward. She stated that she and another coworker prevented the cabinet from falling on her. Appellant stopped work on October 25, 2010 and notified her supervisor on October 27, 2010. The employing establishment controverted the claim.

In an October 25, 2010 return to work form, Dr. Harvey L. Malone, Board-certified in emergency medicine, reported that appellant could return to work on October 27, 2010 with restrictions of no heavy lifting.

By letter dated November 1, 2010, OWCP informed appellant that her claim was reopened for consideration because she had not returned to work in full-time capacity. Appellant was advised of the medical and factual evidence needed in support of her claim and was asked to respond to the questions provided in the letter within 30 days.

Appellant submitted an October 29, 2010 work capacity evaluation (Form OWCP-5(c)) from Dr. Dean Paschal, a treating physician, who reported that appellant could not perform the usual duties of her job and that she was being scheduled for a magnetic resonance imaging (MRI) scan.

By decision dated December 3, 2010, OWCP denied appellant's claim for failing to establish fact of injury.

On March 16, 2011 appellant requested reconsideration of OWCP's decision. She stated that she had a herniated disc and sciatica as a result of the October 25, 2010 employment injury.

In a November 4, 2010 medical report, Dr. Paschal reported that appellant had a history of an abnormal MRI scan two years ago and has had chronic back pain ever since. This chronic back pain was recently severely exacerbated when a filing cabinet fell on her.

Dr. Jash Patel, a Board-certified diagnostic radiologist, reported on November 4, 2010 that appellant had a history of chronic back pain and had an abnormal MRI scan two years ago. Based on a November 4, 2010 MRI scan of the lumbar spine, Dr. Patel diagnosed left L4-5 foraminal disc herniation.

In a December 10, 2010 return to work form, Dr. Marlene Zekoski, Board-certified in internal medicine, reported that appellant was restricted from working until December 17, 2010 and could not lift files, sit for an extended period of time or bend over. She diagnosed disc radiculopathy and sciatica.

By letter dated January 27, 2011, Dr. Colibri Jenkins, Board-certified in psychiatry, reported that appellant had continued complaints of extensive pain in her back, hip and shoulder, which was causing her a considerable amount of anxiety.

In a March 14, 2011 certification of health care provider form (WH-380-E), Dr. Dwight L. McKenna, Board-certified in emergency medicine, reported that appellant's condition commenced on October 25, 2010 when a file cabinet fell on her at work. He stated that he treated appellant for this condition on March 14, 2011. Dr. McKenna noted that appellant was unable to perform her employment duties and diagnosed herniated disc at L4-5, sciatica,

anxiety, depression and right knee pain. He opined that appellant was totally disabled as a result of her herniated disc condition.

On March 16, 2011 Dr. Eugenio Guevara, a Board-certified neurologist, diagnosed lumbar radiculopathy secondary to left L4-5 and right knee pain secondary to mild degenerative joint disease (DJD).

By letter dated May 3, 2011, the employing establishment contested the claim stating that the medical evidence appellant submitted was over six months past the date of incident and that she was a disabled veteran with a previous lower back condition.

In a letter dated May 20, 2011, appellant stated that she had submitted the required documentation in support of her claim, including medical reports which document her herniated disc and sciatica.

By decision dated June 15, 2011, OWCP affirmed the December 3, 2010 decision, as modified, finding that the evidence of record failed to establish that appellant's herniated disc and sciatica conditions were caused or aggravated by the accepted October 25, 2010 employment incident.

On May 2, 2011 appellant, through counsel, requested reconsideration of OWCP's June 15, 2011 decision and stated arguments in support of her claim.

In an undated medical report, Dr. Benjamin J. McNeil, a chiropractor, reported that he had examined appellant on March 27, 2012 and diagnosed displacement of intervertebral disc without myelopathy, degeneration of lumbar or lumbosacral intervertebral disc, cervicgia, cervicobrachial syndrome, lumbago, spasm of muscle, cervical segmental dysfunction and lumbar segmental dysfunction. The medical history noted that, following the October 25, 2010 incident, an MRI scan revealed herniation of the L4-5 disc. Dr. McNeil opined that the heavy cabinet that fell on appellant caused her injuries and that her employment duties exacerbated her neck and hand problems.

On May 2, 2012 Dr. Shannon Ceasar, a treating physician, reported that she had read Dr. McNeil's report and agreed with his initial examination and evaluation of appellant.²

By decision dated July 20, 2012, OWCP affirmed the June 15, 2011 decision finding that the evidence of record failed to establish that appellant's diagnosed medical condition was causally related to the accepted October 25, 2010 employment incident.

On July 25, 2012 appellant, through counsel, requested reconsideration and provided arguments in support of her claim.

Dr. McNeil's undated medical report was resubmitted and signed by Dr. Ceasar.

² Dr. Ceasar simply attached a cover page to a copy of Dr. McNeil's undated report. She did not discuss her own findings on examination. Dr. Ceasar and Dr. McNeil both work at Superior Healthcare.

In a June 5, 2012 medical report, Dr. Ceasar reported that she evaluated appellant on that same date for injuries stemming from an October 25, 2010 work-related incident. She reported that appellant was placing a file in a file cabinet when the entire cabinet started to fall forward. This caused appellant to grab the file cabinet to stop it from falling. Dr. Ceasar noted that following the falling of the file cabinet, appellant began to experience pain in her lower back, weakness in the right side and leg, sharp pain in the left side and leg, pain in the neck and numbness in both hands at the fourth and fifth digits. She provided an activity of daily living assessment and a palpation evaluation. Dr. Ceasar reported that, prior to the October 25, 2010 filing cabinet incident, appellant did not have any significant medical problems or complaints related to her lumbar spine. She opined with reasonable medical certainty that the resulting impact of the heavy filing cabinet falling forward, and the physical effort appellant used to prevent it from falling, caused her displacement of intervertebral disc without myelopathy, degeneration of lumbar or lumbosacral intervertebral disc, cervicgia, cervicobrachial syndrome, lumbago, spasm of muscle, cervical segmental dysfunction and lumbar segmental dysfunction. Dr. Ceasar further stated that appellant's required daily work exacerbated her conditions which caused numbness in the hands and pain and discomfort in the lumbar spine. Appellant had difficulty carrying files during her daily work due to pain and loss of proper hand function. Dr. Ceasar opined with reasonable medical certainty that the resulting impact of the heavy cabinet caused appellant's injuries and the continued heavy work load and lifting exacerbated the problem in her neck and hands.

By decision dated August 24, 2012, OWCP affirmed the July 20, 2012 decision finding that the evidence of record failed to establish that appellant's medical condition was causally related to the accepted October 25, 2010 employment incident.

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 the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability 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 occupational disease.⁴

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 which is alleged to have occurred.⁵ The second

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Elaine Pendleton*, *supra* note 3.

component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.⁶ Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.⁷

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁸

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁹ The opinion of the physician must be based on 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 claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of 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.¹⁰

ANALYSIS

OWCP accepted that the October 25, 2010 employment incident occurred as alleged. The issue is whether appellant established that the incident caused her multiple medical conditions. The Board finds that she did not submit sufficient medical evidence to support that

⁶ See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). See *Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

⁷ *Supra* note 5.

⁸ *Betty J. Smith*, 54 ECAB 174 (2002).

⁹ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹⁰ *James Mack*, 43 ECAB 321 (1991).

her neck, back, leg and hand conditions are causally related to the October 25, 2010 employment incident.¹¹

On appeal appellant states that Dr. Ceasar's comprehensive report, along with the prior medical reports of record, provide an uncontroverted inference of causal relationship.

The Board finds that the opinion of Dr. Ceasar is not well rationalized. Dr. Ceasar's June 5, 2012 report establishes multiple diagnoses, including displacement of intervertebral disc without myelopathy, degeneration of lumbar or lumbosacral intervertebral disc, cervicgia, cervicobrachial syndrome, lumbago, spasms of muscle, cervical segmental dysfunction and lumbar segmental dysfunction. She failed, however, to explain how stopping a file cabinet from falling could have caused appellant her injuries other than offering a generalized opinion that this caused appellant to use physical effort. Dr. Ceasar merely recounted the incident as described by appellant and failed to provide a sufficient explanation as to the mechanism of injury and how the accepted October 25, 2010 employment incident caused or contributed to any injury. Her statement that appellant suffered an injury at work is equivocal in nature and of limited probative value.¹²

The Board further notes that Dr. Ceasar failed to provide an adequate and detailed medical history. In the undated report which was initially created by Dr. McNeil and later signed by Dr. Ceasar, the medical history noted that, following the October 25, 2010 incident, an MRI scan revealed herniation of the L4-5 disc. Dr. Ceasar did not indicate a date when the MRI scan was taken and made no mention of this diagnostic testing in her June 5, 2012 report. She failed to provide any other details regarding appellant's medical history and stated that her opinion on causal relationship was based on the fact that there were no prior complaints or injuries leading to the October 25, 2010 employment incident. Contrary to Dr. Ceasar's assertion, it has already been established that appellant suffered from a preexisting back condition. Dr. Patel and Dr. Paschal both reported that appellant had a history of chronic back pain and an abnormal MRI scan two years ago. Dr. Ceasar did not provide an accurate medical history of appellant's condition when providing her diagnoses. She failed to review appellant's diagnostic test results and did not explain whether, or how, appellant's current MRI scan results could determine that the conditions were a result of the accepted employment incident. It is unclear if appellant's current conditions are a result of a preexisting condition or were caused or aggravated by the October 25, 2010 employment incident.

With respect to appellant's hand and neck injuries, Dr. Ceasar opined that appellant's daily work duties of carrying files exacerbated her October 25, 2010 injuries and caused her pain in the lumbar spine and numbness in the hands. Dr. Ceasar is attributing appellant's neck and hand injury to an occupational injury produced by appellant's work environment over a period longer than a single workday or shift rather than an injury from a single occurrence within a

¹¹ See *Robert Broome*, 55 ECAB 339 (2004).

¹² *S.W.*, Docket 08-2538 (issued May 21, 2009).

single workday as alleged by appellant in this claim.¹³ Moreover, the Board has consistently held that pain is a description of a symptom rather than a compensable medical diagnosis.¹⁴ Thus, this medical report does not support that appellant's neck and hand conditions were caused by a traumatic incident on October 25, 2010.

Dr. Ceasar did not evaluate appellant until over seven months after the October 25, 2010 employment incident. Her history of the October 25, 2010 employment incident merely repeated appellant's factual assertions. Dr. Ceasar noted no additional details about the mechanism of the alleged injury, failed to address appellant's prior medical history and did not explain how the accepted October 25, 2010 incident caused or contributed to her multiple injuries. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹⁵ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹⁶ Without medical reasoning explaining how the October 25, 2010 employment incident caused or contributed to her injuries, especially in light of the preexisting back condition. Dr. Ceasar's reports are insufficient to meet appellant's burden of proof.¹⁷

The remaining medical evidence of record is also insufficient to establish a causal relationship between appellant's injuries and the October 25, 2010 employment incident.

In a November 4, 2010 medical report, Dr. Paschal reported that appellant had a history of abnormal MRI scan two years ago and has had chronic back pain ever since. He noted that this chronic back pain was recently severely exacerbated when a filing cabinet fell on her. Dr. Paschal's diagnosis of chronic back pain is a description of a symptom rather than a clear diagnosis of a medical condition.¹⁸ It is not possible to establish the cause of a medical condition, if the physician has not stated a diagnosis, but only notes pain. Thus, Dr. Paschal's report is insufficient to establish appellant's claim.

In a November 4, 2010 diagnostic report, Dr. Patel reported that appellant had a history of chronic back pain and had an abnormal MRI scan two years ago. He stated that appellant's current MRI scan of the lumbar spine revealed left L4-5 foraminal disc herniation. While

¹³ A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

¹⁴ *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹⁵ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁶ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁷ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹⁸ The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, *supra* note 14.

Dr. Patel provided a diagnosis of left L4-5 foraminal disc herniation, he did not explain whether or how the accepted October 25, 2010 incident caused or contributed to any back condition. 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.¹⁹ Thus, Dr. Patel's report is insufficient to meet appellant's burden of proof.

In a March 14, 2011 certification of health care form, Dr. McKenna reported that appellant's condition commenced on October 25, 2010 when a file cabinet fell on her at work. He stated that he treated appellant for this condition on March 14, 2011. Dr. McKenna noted that appellant was unable to perform her employment duties and diagnosed herniated disc at L4-5, sciatica, anxiety, depression and right knee pain. He opined that appellant was totally disabled as a result of her herniated disc condition. While Dr. McKenna provided a diagnosis of herniated disc and sciatica, he did not explain whether or how the accepted October 25, 2010 incident caused or contributed to any back condition. He merely recounted the incident as alleged by appellant but failed to provide an opinion on the cause of appellant's injury. Moreover, Dr. McKenna did not treat appellant until approximately five months after the employment incident and failed to provide a medical history. 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.²⁰ Thus, Dr. McKenna's report is insufficient to meet appellant's burden of proof.

There is no indication that Dr. McNeil, appellant's chiropractor, obtained or reviewed x-rays in rendering his diagnosis.²¹ As he does not meet the statutory definition of a physician, his reports lack probative value. Dr. Malone's October 25, 2010 note and Dr. Jenkins' January 27, 2011 report failed to provide medical diagnoses.

Dr. Zekowski's December 10, 2010 report provided a diagnosis of disc radiculopathy and sciatica and Dr. Guevara's report provided a diagnosis of lumbar radiculopathy secondary to left L4-5 and right knee pain secondary to degenerative joint disease. While these physicians did provide a firm medical diagnosis, they failed to state any opinion on causal relationship.²² Thus, the additional medical reports are of limited probative value.

Appellant's counsel argues that the medical reports submitted are sufficient to establish her claim, referencing Dr. Ceasar's June 5, 2012 report. While OWCP shares responsibility in the development of the evidence to see that justice is done, it is appellant's burden of proof to submit the evidence necessary to establish her claim.²³ The Board has reviewed the medical

¹⁹ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

²⁰ *Id.*

²¹ 5 U.S.C. § 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary. See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

²² *Supra* note 18.

²³ *Phillip L. Barnes*, 55 ECAB 426 (2004).

evidence and no physician has provided a completely rationalized opinion that the October 25, 2010 employment incident caused or aggravated appellant's medical conditions. The single, generalized statement by Dr. Ceasar that causal connection exists is not sufficient to meet appellant's burden of proof.

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the October 25, 2010 employment incident and appellant's injuries. Thus, appellant has failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her back, leg, neck and hand injuries are causally related to the October 25, 2010 employment incident, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the August 24 and July 20, 2012 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 22, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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