

intervertebral disc after a fall from a broken chair in 2003. She became aware of her condition and realized that it was causally related to her employment on April 1, 2003. Appellant did not immediately stop work.

On September 6, 2012 OWCP advised appellant of the type of evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed back condition to specific work factors. OWCP advised that medical evidence must be from a qualified physician and that nurse practitioners and physician's assistants did not qualify as physicians under FECA.

In a September 18, 2012 statement, appellant indicated that in 2000 she fell out of her chair at work and injured her back.² She reported using a broken chair without back support for six months. Appellant advised that her job required her to sit continuously and take incoming calls daily which caused damage to her back. She stated that sitting in her job occurred daily. Over the years, appellant received treatment for her back condition and was recently hospitalized.

Appellant submitted reports from Dr. Darien Behravan, an osteopath specializing in pain management. On September 23, 2004 Dr. Behravan treated her for severe low back pain. A lumbar discogram was positive for L3-4 severe degenerative disc disease and a magnetic resonance imaging scan of the lumbar spine revealed L3-4 degenerative disc disease with a bulge. Dr. Behravan noted appellant's complaints of low back pain radiating into the right leg. Appellant had pain on extension and flexion, motor strength was reduced on the right side with tenderness to touch of the L4 area. Dr. Behravan diagnosed lumbar degeneration, a lumbosacral intervertebral disc and sciatica. He recommended epidural steroid injections and returned appellant to part-time work. In an October 21, 2004 report, Dr. Behravan treated appellant for lumbar sprain, lumbar degenerative disc disease and sciatic pain. He opined that her symptoms were clearly caused by the conditions and factors of her employment and was directly caused by her work-related injury. Dr. Behravan noted that the lumbar sprain was a symptom or condition related to a deeper underlying cause or pathology, in this case appellant's degenerative disc disease. He noted that the sciatica was a sequelae of her lumbar sprain and that her lumbar sprain, lumbar degenerative disc disease and sciatica were interrelated.

Appellant was treated by Dr. Miriam E. Dunham, a Board-certified family practitioner, who diagnosed back and leg pain and sciatica. Dr. Dunham provided discharge instructions for managing chronic pain and obesity. She stated that appellant was unable to work since August 21, 2012. In a September 4, 2012 work status report, Dr. Dunham noted that appellant was disabled from September 4 to 9, 2012 and then could return to work with restrictions. Appellant was also treated by Dr. Miya M. Shanahan, a Board-certified internist. In an August 24, 2012 visit verification form, Dr. Shanahan noted that appellant was currently hospitalized and disabled from August 21 to September 4, 2012 when she could return to work without restrictions. Appellant also provided physical therapy records.

² The employing establishment noted that appellant filed a separate claim for the 2000 injury. The other claim is not presently before the Board.

In a decision dated November 21, 2012, OWCP denied appellant's claim finding that the medical evidence did not establish that her back condition was causally related to work activities.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. 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. Appellant must also establish that such event, incident or exposure caused an injury.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁴

ANALYSIS

It is not disputed that appellant's duties as collection representative included prolonged sitting and answering the telephone. She was diagnosed with a lumbar sprain, lumbar degenerative disc disease and sciatica. The Board finds that appellant did not submit sufficient medical evidence to establish that her claimed back conditions are causally related to specific employment activities or conditions.

On September 23, 2004 Dr. Behravan noted her status but did not address the cause of her condition. Dr. Behravan's October 21, 2004 report diagnosed lumbar sprain, lumbar degenerative disc disease and sciatica. He stated generally that appellant's symptoms were directly related and caused by the conditions and factors of her employment. Appellant's

³ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

symptoms were related to a deeper underlying pathology, degenerative disc disease. Dr. Behravan stated that the lumbar sprain, lumbar degenerative disc disease and a sciatic were interrelated. Although he provided some support for causal relationship, he did not adequately explain how appellant's work activities as a collection representative were sufficient to cause or contribute to the diagnosed degenerative lumbar disease. At best, Dr. Behravan provided a conclusory opinion regarding causal relationship.⁵ He did not explain the process by which prolonged sitting and answering the telephone would cause degeneration of the lumbar spine and why such condition would not be due to any nonwork factors such as obesity. Dr. Behravan's 2004 reports offer no information regarding appellant's current medical condition and, thus, lack probative value.⁶ His reports are insufficient to meet her burden of proof.

Dr. Dunham diagnosed back and leg pain, sciatica and obesity. In a September 4, 2012 work status report, she noted that appellant was disabled from September 4 to 9, 2012 when she could return to work with restrictions. Similarly, appellant submitted a visit verification form from Dr. Shanahan, who noted that appellant was hospitalized and would be disabled from August 21 to September 4, 2012. Neither physician, however provided an opinion on causal relationship. The reports are insufficient to establish the claim. Dr. Dunham and Dr. Shanahan addressed treatment not the issue of whether appellant's employment activities had caused or aggravated the diagnosed medical conditions.⁷

Appellant also submitted physical therapy records. However, this evidence is of no probative medical value. The Board has noted that a physical therapist is not a physician as defined under FECA and is not competent to render a medical opinion under FECA.⁸ Therefore, this report is insufficient to meet appellant's burden of proof.

The Board finds that the medical evidence is not sufficient to establish that appellant's lumbar conditions are causally related to her employment. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that her condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁹ Causal relationships must be established by rationalized medical opinion evidence. OWCP properly found that she did not meet her burden of proof to establish her claim.

⁵ See *T.M.*, Docket No. 08-975 (issued February 6, 2009) (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).

⁶ See *Michelle Baker*, Docket No. 05-798 (issued October 3, 2005).

⁷ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁸ See 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law); *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

⁹ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

On appeal, appellant asserts that her a lumbar sprain, lumbar degenerative disc disease and sciatica were caused by her repetitive work duties. She contends that she submitted sufficient medical evidence to support her claim. As noted, the medical evidence does not establish that her diagnosed back conditions are causally related to her employment. Appellant has not submitted a medical opinion from a physician which explains the reasons how sitting at work or other work activities caused or contributed to her degenerative lumbar disease.

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 meet her burden of proof to establish that her claimed conditions were causally related to her employment.¹⁰

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 29, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

¹⁰ With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).