

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

L.G., Appellant)	
)	
and)	Docket No. 13-459
)	Issued: May 8, 2013
DEPARTMENT OF VETERANS AFFAIRS,)	
AUDIE L. MURPHY VETERANS HOSPITAL,)	
San Antonio, TX, Employer)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 28, 2012 appellant filed a timely appeal from a July 2, 2012 merit decision 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 employment-related injury on April 4, 2012.

On appeal, appellant's attorney asserts that the decision is contrary to fact and law.

FACTUAL HISTORY

On April 12, 2012 appellant, then a 54-year-old medical technologist, filed a traumatic injury claim alleging that on April 4, 2012 she injured her back, left groin and knee on an uneven

¹ 5 U.S.C. §§ 8101-8193.

surface of the main sidewalk at the employing establishment when her walker wheels caught and would not move. Lorraine Villaneuva, a witness, indicated that she saw the walker wheels get caught. In a second claim form, dated April 15, 2012, Lee C. Sadkowski, an employing establishment supervisor, stated that appellant complained about the potential for injury prior to the incident and was unhappy that a previous case was closed and wanted continuing medical care. Appellant did not stop work.

By letter dated April 27, 2012, OWCP informed appellant of the evidence needed to support her claim.

The employing establishment controverted the claim. In an incident report dated April 4, 2012, Irene E. Herrera, an employing establishment industrial hygienist, reported that she was walking in the main corridor that day and met appellant who was reporting for duty. She stated that appellant informed her of a potential tripping hazard on the sidewalk, stating that her walker had caught on a crack. When Ms. Herrera asked appellant if she was injured, she responded that she had not been because she was walking slowly. She reported the potential tripping hazard. In a May 3, 2012 letter, Arline B. Rubin, a workers' compensation coordinator, noted that appellant had several additional claims, and that her master file had inadvertently been closed. She reported that appellant had a similar injury on May 16, 2010 shortly after she returned to duty following an extended absence. OWCP was also in the process of obtaining a second opinion evaluation under the master claim.

In correspondence dated May 3, 2012, appellant indicated that she was also claiming that she injured her neck. She submitted a third traumatic injury claim dated May 3, 2012 in which she claimed a neck injury that was mistakenly not put on the original claim form. In a May 27, 2012 statement, appellant noted that she was walking with her rollator walker on the sidewalk to the parking lot and, while in front of the employees' bus stop, the right front wheel of the walker became stuck in a hole in the sidewalk. Her left knee struck the crossbar of the walker, and her back and neck were jerked backwards as she tried to keep her balance. Since the incident, appellant had spasms and shooting pains radiating down her left leg, a stiff neck with pain radiating down her left arm, a swollen knee, and she was unable to sit for prolonged periods of time and had bowel and bladder leakage.

An April 25, 2012 magnetic resonance imaging (MRI) scan study of the lumbar spine demonstrated that, when compared to a May 26, 2010 study, a disc bulge at L5-S1 had progressed to a disc herniation with abutment of both S1 nerve roots in the lateral recesses but no significant interval change in disc bulges at L3-4 and L5. A May 15, 2012 MRI scan study of the cervical spine demonstrated facet joint arthrosis at C4-5, an annular disc bulge at C5-6 and severe disc space narrowing at C6-7.

In reports dated April 13 to May 25, 2012, Dr. Rodrigo David Cantu, Board-certified in family medicine, noted a history that on April 4, 2012 appellant fell at work which exacerbated her back pain that radiated down her left leg. He reported clinical findings of low back tenderness with left knee and neck pain. Dr. Cantu diagnosed cervical and lumbar disc disease and a right hip injury. He advised that appellant could work with restrictions. On May 18, 2012 Dr. Cantu reported a history that she fell to the ground injuring her left knee and cervical spine and exacerbated a known injury of her lumbar spine. He described her complaints of neck and arm pain and new symptoms of fecal incontinence and worsening urinary incontinence. Dr. Cantu diagnosed herniated lumbar disc, cervical disc disease and cervical and left knee pain.

He advised that appellant's fall on April 4, 2012 was the cause of her symptoms. Dr. Cantu noted physical examination findings and imaging study findings, stating, "the forces involved in a fall from standing onto a hard surface are sufficient to cause worsening of a known lumbar disc disorder and ultimately a true herniation of a lumbar disc."

By decision dated July 2, 2012, OWCP denied the claim finding that the evidence did not support that the April 4, 2012 incident occurred as appellant described.

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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.²

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.³ 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, by a preponderance of the reliable, probative and substantial evidence. 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. 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.⁴

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ 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 employee.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

² Gary J. Watling, 52 ECAB 278 (2001).

³ 20 C.F.R. § 10.5(ee) (1999, 2011); Ellen L. Noble, 55 ECAB 530 (2004).

⁴ Gary J. Watling, *supra* note 2.

⁵ Jacqueline M. Nixon-Steward, 52 ECAB 140 (2000).

⁶ Leslie C. Moore, 52 ECAB 132 (2000); Gary L. Fowler, 45 ECAB 365 (1994).

⁷ Dennis M. Mascarenas, 49 ECAB 215 (1997).

ANALYSIS

The Board finds that on April 4, 2012 appellant's walker became stuck in a sidewalk near the employees' bus stop. Although OWCP found that this incident did not occur as alleged, there is no significant evidence indicating that the incident did not occur. Appellant's statement and that of the witness, Ms. Villaneuva, noted that she did not fall when her walker became stuck.⁸ The Board, however, finds that the medical evidence of record is insufficient to establish that appellant sustained an injury or medical condition caused by this incident.

The April 25 and May 15, 2012 MRI scan studies of the lumbar and cervical spines do not include any opinion as to the cause of her diagnosed conditions. 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.⁹

In reports dated April 13 to May 25, 2012, Dr. Cantu noted a history that on April 4, 2012 appellant fell at work. He described her pain complaints, reported clinical, diagnosed cervical and lumbar disc disease and right hip injury and advised that appellant could work with restrictions. In a May 18, 2012 narrative report, Dr. Cantu reported a history that appellant fell to the ground on April 4, 2012, injuring her left knee and cervical spine and exacerbating a known injury of her lumbar spine. He opined that the fall was the cause of appellant's symptoms, physical examination findings, and imaging study findings, stating, "the forces involved in a fall from standing onto a hard surface are sufficient to cause worsening of a known lumbar disc disorder and ultimately a true herniation of a lumbar disc."

The record establishes, however, that appellant did not fall on April 4, 2012. She alleged that her walker became caught in the sidewalk. Dr. Cantu therefore based his opinion on an incorrect history of the April 4, 2012 incident. It is well established that medical reports must be based on a complete and accurate factual and medical background; medical opinions based on an incomplete or inaccurate history are of diminished probative value.¹⁰

The Board has long held that an opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹¹ The opinion should be expressed in terms of a reasonable degree of medical certainty.¹² The Board finds that Dr. Cantu did not provide a reasoned medical opinion, based on a complete and accurate factual and medical background. As he based his opinion on an incorrect history of the April 4, 2012 work incident, his report is of diminished probative value and insufficient to meet appellant's burden of proof.

⁸ An employee's statement regarding the circumstances surrounding an injury is of great probative value and will be accepted unless refuted by persuasive evidence. *H.G.*, 59 ECAB 552 (2008).

⁹ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁰ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹¹ *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹² *Ricky S. Storms*, 52 ECAB 349 (2001).

Appellant did not submit sufficient medical evidence to establish that she sustained an employment injury caused by the April 4, 2012 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 an injury causally related to the April 4, 2012 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2012 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: May 8, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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