

FACTUAL HISTORY

On February 16, 2007 appellant, then a 55-year-old human resources technician, filed a traumatic injury claim (Form CA-1) claiming that on February 15, 2007 she sustained a “bruised left hip and back” when she slipped and fell in an icy parking lot at a training center.

In an October 15, 2010 telephone memorandum, the employing establishment noted that appellant had been on medical leave from six to nine months due to chronic fatigue syndrome and back pain. Appellant completed the Form CA-1 on February 16, 2007 and notified her supervisor on the date of the claimed injury, but the employing establishment did not submit the claim at that time as she did not lose time for work. When she mentioned the 2007 injury pursuant to her 2010 absence, the employing establishment submitted the claim.

In an October 15, 2010 letter, OWCP advised appellant of the evidence needed to establish her claim, including factual evidence supporting timely filing and performance of duty, and medical evidence explaining how and why the February 16, 2007 slip and fall would cause the claimed injury. Appellant was afforded 30 days to submit such evidence.

A March 6, 2008 lumbar magnetic resonance imaging (MRI) scan showed mild broad-based disc bulges at L3-4 and L4-5, mild left-sided neural foraminal narrowing at L3-4 and L4-5 secondary to disc bulges, epidural lipomatosis of questionable clinical significance and no interval changes when compared to a June 21, 2001 scan. A June 13, 2008 lumbar MRI scan showed a small annular tear at L4-5, with no interval changes from the March 6, 2008 scan.

In a September 29, 2010 Form CA-20 report, Dr. Horatio G. Daub, an attending physician Board-certified in geriatric medicine, noted the February 16, 2007 slip and fall and a June 9, 2009 workplace incident when appellant reinjured her back when lifting a box. He diagnosed low back pain secondary to a lumbosacral strain. Dr. Daub found appellant totally disabled for work beginning on November 16, 2009. He checked a box “yes” indicating his support for causal relationship, explaining that appellant had “[n]o significant back pain or problems until the initial injury [o]n February 16, 2007.”

The employing establishment provided an October 15, 2010 letter controverting appellant’s claim, contending that Dr. Daub’s finding of disability was improper. It asserted that appellant was trying to obtain FECA benefits as she had been absent from work from November 16, 2009 onward due to chronic fatigue syndrome.

By decision dated November 19, 2010, OWCP denied appellant’s claim on the grounds that causal relationship was not established. It found that she filed a timely claim; the February 15, 2007 incident occurred at the time, place and in the manner alleged, and that she was in the performance of duty when she slipped and fell. However, appellant did not submit sufficient medical evidence to establish that the February 15, 2007 incident caused or aggravated a back or hip condition. OWCP further found that she submitted no evidence or explanation concerning the June 9, 2009 occupational lifting incident mentioned by Dr. Daub.

On August 24, 2011 appellant requested reconsideration. She submitted an August 23, 2011 report from Dr. Scott J. Jarman, an attending physician Board-certified in physiatry and

pain medicine, who noted that he had treated appellant “for the last few years.” Dr. Jarmain opined that appellant’s chronic mild lumbar pain in the years before the February 15, 2007 incident “was probably related to some intermittent strain of the lumbar paraspinal muscles and degenerative facet joint arthropathy, directly related to repeated bending, lifting and carrying at work.” He related that the February 15, 2007 slip and fall resulted in new left hip pain and worsening of her lower back pain. Dr. Jarmain referred to office notes and physical therapy forms that are not of record. He noted that appellant experienced increased lumbar pain after lifting a heavy box at work on June 9, 2009. Based on appellant’s history, Dr. Jarmain opined that appellant’s “condition [was] causally related to the job duties at work” and the February 15, 2007 slip and fall, because appellant’s chronic lumbar pain increased after that incident. He posited that the slip and fall caused L3-4 and L4-5 disc herniations visible on the March 6, 2008 MRI scan, worsened by the June 9, 2009 lifting incident.

By decision dated July 5, 2012, OWCP denied modification on the grounds that Dr. Jarmain’s opinion was insufficient to establish causal relationship. It found that Dr. Jarmain did not provide a consistent explanation of how the February 15, 2007 incident caused or aggravated a lumbar disc herniation or annular tear.

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 and/or specific condition for which compensation is claimed are causally related to the employment injury.² 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.³

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ *Deborah L. Beatty*, 54 ECAB 340 (2003).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

Appellant claimed that she sustained a left hip and low back injury when she fell in an icy parking lot on February 15, 2007. OWCP accepted that the slip and fall occurred as alleged and was in the performance of duty. It denied the claim, however, due to factual inconsistencies in the medical evidence regarding the mechanism of injury and a lack of medical reasoning supporting a causal connection between the accepted slip and fall and the claimed injuries. In its November 19, 2010 and July 5, 2012 decisions, OWCP found that appellant's physicians attributed appellant's condition not only to the February 15, 2007 incident, but to a history of preexisting lumbar complaints and a June 9, 2009 workplace lifting incident.

In support of her claim, appellant submitted March 6 and June 13, 2008 lumbar MRI scans showing disc bulges at L3-4 and L4-5 and a small annular tear at L4-5. Both reports mention a 2001 lumbar MRI scan. However, she did not submit this prior study, or contemporaneous medical reports indicating why it was performed. An additional difficulty is the lack of corroboration of a June 9, 2009 occupational lifting incident. Dr. Daub, an attending Board-certified gerontologist, and Dr. Jarmain, an attending Board-certified physiatrist, both opined that the June 9, 2009 incident worsened preexisting lumbar conditions. Appellant did not allege a June 9, 2009 lifting injury on her claim form. Moreover, she did not submit any contemporaneous medical evidence regarding its assessment or treatment. It is significant that Dr. Daub did not examine appellant until August 23, 2010, more than three years after the February 15, 2007 incident and more than a year after June 9, 2009. On August 23, 2011 Dr. Jarmain noted that he had treated appellant "for the last few years" but did not specify that he treated appellant for either the February 15, 2007 or June 9, 2009 incidents. The conflicting histories of injury cast significant doubt on appellant's version of events.⁷

Regarding a causal relationship between the accepted February 15, 2007 slip and fall and a lumbar condition, Dr. Daub checked a box "yes" indicating his support for causal relationship, noting that appellant had no significant history of back problems before the incident. However, the Board has held that merely checking a box "yes" on a form report is not sufficient to establish causal relationship.⁸ Also, Dr. Daub did not explain why appellant underwent a lumbar MRI scan in 2001 if she had no history of lumbar complaints. Dr. Jarmain indicated that she began experiencing mild intermittent back pain not specifically related to any injury outside of work or at work. Instead, he opined that it was low grade intermittent back pain probably related to a strain from repeated bending and lifting. Dr. Jarmain further opined that the February 15, 2007 incident increased preexisting lumbar pain, indicating that the slip and fall caused L3-4 and L4-5 disc herniations. However, he did not explain the pathophysiologic role of the June 9, 2009 lifting incident, or explain how he was able to distinguish the objective effects of the

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *A.D.*, Docket No. 09-1185 (issued January 27, 2010). *See also Caroline Thomas*, 51 ECAB 451 (2000).

⁸ *Donald W. Long*, 41 ECAB 142 (1989).

February 15, 2007 incident from appellant's preexisting lumbar symptoms or the subsequent injury. This lack of medical rationale significantly diminishes the probative value of Dr. Jarman's opinion.⁹

The Board notes that OWCP advised appellant by October 15, 2010 letter of the need to submit her physician's opinion explaining how and why the February 15, 2007 slip and fall incident would cause the claimed injury. However, appellant did not submit such evidence. Therefore, she failed to meet her burden of proof in establishing causal relationship.

On appeal, counsel asserts that OWCP predicated its July 5, 2012 decision on flawed findings of fact and conclusions of law. As noted, the Board finds that appellant did not submit sufficient medical evidence to meet 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained a traumatic injury in the performance of duty as alleged.

⁹ *Deborah L. Beatty, supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 5, 2012 is affirmed.

Issued: May 13, 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