

FACTUAL HISTORY

On May 9, 2012 appellant, then a 32-year-old city carrier, filed a traumatic injury claim alleging that on that same date she sustained a lower back, buttocks and left leg injury after she fell down steps while on her route. She notified her supervisor and first sought medical treatment on May 9, 2012.

By letter dated May 17, 2012, the employing establishment controverted the claim. It noted that appellant claimed she fell down steps at 311 E. Westfield Avenue on May 9, 2012. An investigation of the scene revealed that the steps and surrounding area were wet due to recent rains. The employing establishment noted that appellant's uniform pants and shirt were dry, which indicated that she did not fall onto the wet area. It further noted that she initially indicated that she needed medical treatment and claimed she could not drive but drove herself to the hospital when she was informed that an ambulance would be called. The employing establishment described appellant as hostile and uncooperative during the investigation immediately after the accident, casting doubt on the validity of her claim.

In a May 9, 2012 Duty Status Report (Form CA-17) and prescription slip, a physician's assistant reported that appellant fell down steps injuring her lower back, buttocks and left leg and was treated in the emergency room (ER).

In a May 14, 2012 CA-17 form and physician's note, Dr. Aditi Menon, Board-certified in physical medicine and rehabilitation, reported that appellant fell down steps on May 9, 2012 injuring her lower back, buttocks and left leg. He diagnosed lumbar sprain/strain and provided work restrictions.

By letter dated May 22, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. It requested additional factual and medical evidence and provided appellant 30 days to respond.

In an undated statement, Carlos Vega, a U.S. Postal Service (USPS) employee, reported that on May 9, 2012 he accompanied Postmaster Allocco to investigate appellant's accident, which occurred while on route after she tripped. During the investigation, the Postmaster asked her about the incident and she refused to answer his questions.

In a May 14, 2012 medical report, Dr. Menon reported that appellant was employed as a USPS letter carrier and sought treatment on May 14, 2012 after she experienced low back pain from a May 9, 2012 fall at work. Appellant stated that she was delivering mail at a home when she fell down the stairs outside the house after a slip and landed on her low back. She sought emergency treatment that same date and returned for follow-up treatment due to continued pain. Upon physical examination, Dr. Menon diagnosed lumbar strain/sprain and lumbar myospasm.

In follow-up reports dated May 21 and June 4, 2012, Dr. Menon reported that a May 19, 2012 x-ray of the lumbar spine revealed dexoscoliosis related to muscle spasms and mild disc space narrowing at L5-S1. A May 19, 2012 magnetic resonance imaging (MRI) scan revealed left sided disc herniation at T11-12, bilateral facet changes at L5-S1 and degenerative disc disease at L5-S1. Dr. Menon diagnosed lumbar degenerative disc disease, lumbar facet

arthropathy, thoracic herniated nucleus pulposus and myospasm. Treatment notes were submitted dated May 14 through June 13, 2012.

On May 24, 2012 appellant was examined by physical therapists and underwent a functional capacity evaluation (FCE).

By decision dated June 22, 2012, OWCP denied appellant's claim finding that the evidence of record failed to establish that the May 9, 2012 employment incident occurred at the time, place and in the manner alleged.

By letter dated July 19, 2012, appellant requested reconsideration of OWCP's decision. She stated that she disagreed with the employing establishment's allegations that her clothes should have been wet if she fell. Appellant stated that, when she fell, it was only drizzling. She provided two photographs in support of her claim explaining that the pictures were from the site where the accident occurred and showed Postmaster Allocco on the scene. Appellant further stated that she "tripped down a step, fell backwards, my back was arched, with my left leg bent as if the heel was touching my buttocks while still on the steps." She explained that she chose not to take an ambulance because she did not think that her injury was life threatening.

In a separate June 19, 2012 statement, appellant repeated the events surrounding the May 9, 2012 employment incident. She stated that, after she fell on that date, she called Mr. Slava, her immediate supervisor, who reported to the scene. Appellant informed him that she fell down the steps and described it as "more like a trip my left shoe bottom got stuck on one of the stairs and my left leg bent and my right leg was straight as I fell backwards." She stated that Mr. Slava took pictures and that Postmaster Allocco arrived shortly after asking her to repeat the information she had already provided. Appellant stated that she was in pain and sought emergency treatment.

In a June 18, 2012 report, Dr. Menon reported that appellant sought treatment for lumbar pain and recommended continued physical therapy. OWCP notes dated June 14 to 26, 2012 were also submitted.

By decision dated October 22, 2012, OWCP affirmed the June 22, 2012 decision finding that the evidence of record failed to establish that the May 9, 2012 employment incident occurred at the time, place and in the manner alleged. It noted that fact of injury was not established because the evidence revealed three different histories of how the injury occurred.

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 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 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

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 2.

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 *Elaine Pendleton*, *supra* note 2.

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

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

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

The Board finds that appellant failed to establish that she sustained a lumbar injury in the performance of duty on May 9, 2012.

Appellant must establish all of the elements of her claim in order to prevail. She must prove her employment, the time, place and manner of injury, a resulting personal injury and that her injury arose in the performance of duty. In its October 22, 2012 decision, OWCP found that appellant did not establish that the incident occurred at the time, place and in the manner alleged. The Board finds, however, that the evidence of record is sufficient to establish that the May 9, 2012 incident occurred as alleged.

On her May 9, 2012 Form CA-1, appellant alleged that she sustained a lower back, buttocks and left leg injury after she fell down steps while on her route. She immediately notified her supervisor and sought medical attention on that same date. By letter dated May 17, 2012, the employing establishment controverted the claim noting that an investigation of the accident revealed that the steps and surrounding area were wet due to recent rain. The employing establishment noted that appellant's uniform pants and shirt were dry which indicated that she did not fall onto the wet area. In a May 9, 2012 Form CA-17, an ER physician's assistant reported that appellant fell down steps injuring the lower back, buttocks and left leg. Dr. Menon's May 14, 2012 report noted that she was delivering mail at a home when she fell down the stairs outside the house after a slip and landed on her low back.

By decision dated June 22, 2012, OWCP denied appellant's claim for failing to establish fact of injury. Appellant requested reconsideration and responded to the employing establishment's allegations in two separate statements. In her July 19, 2012 request for reconsideration, she stated that her clothes were not wet when she fell because it was only drizzling when the incident occurred. Appellant further stated that she "tripped down a step, fell backwards, my back was arched, with my left leg bent as if the heel was touching my buttocks while still on the steps." In support of her allegations, she provided two photographs of the accident site shortly after the incident occurred. In a separate June 19, 2012 statement, appellant stated that she fell down the steps on May 9, 2012 and described it as "more like a trip my left shoe bottom got stuck on one of the stairs and my left leg bent and my right leg was straight as I fell backwards."

In its October 22, 2012 decision, OWCP found that appellant did not establish that the May 9, 2012 employment incident occurred as alleged because there were three different histories of how the injury occurred and how she landed, including that she tripped on the bottom of her left shoe and got stuck on one of the stairs causing her to fall backwards with her left leg bent, that she tripped down a step and fell backwards with her back arched and left leg bent, and that she fell down the stairs after a slip and landed on her low back. The Board finds, however,

¹⁰ *James Mack*, 43 ECAB 321 (1991).

that her statements have sufficiently established that the May 9, 2012 employment incident occurred as alleged. Appellant has consistently alleged that she fell down the stairs on May 9, 2012 while delivering mail on both her Form CA-1 and her July 19, 2012 narrative statements. The fact that her July 19, 2012 narrative statements provide more details regarding her fall does not negate that she fell down the stairs on May 9, 2012. Both July 19, 2012 narrative statements assert that appellant tripped and fell backwards. The minor differences in detail of the statements do not establish that the fall did not occur in the manner alleged. Moreover, the May 9, 2012 ER note was consistent in noting that appellant fell backward down steps. Dr. Menon's May 14, 2012 report, which notes that she slipped and fell down the stairs does not cast such inconsistencies as to establish that she did not suffer from a fall down the steps on May 9, 2012.

While the employing establishment controverted the claim stating that appellant's clothes should have been wet if she fell backwards, the Board finds that this assumption is not enough to establish that the incident did not occur as alleged. Moreover, appellant provided photographs of the accident scene shortly after her fall. The ground and steps do not appear to be so wet that her clothing would necessarily become wet as a result of her fall. The Board has held that a claimant's statement that an injury occurred at a given time, place and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹¹

Appellant's statements have all been consistent with one basic account of the mechanism of the employment incident. Moreover, she sought medical treatment, immediately notified her supervisor and filed her Form CA-1 on the same date of the employment incident. The Board finds that, given the above referenced evidence, appellant has alleged with specificity that the incident occurred at the time, place and in the manner alleged.¹²

In medical reports dated May 14 to June 18, 2012, Dr. Menon reported that appellant was a USPS carrier and sought treatment after she fell down the stairs outside a house while working on May 9, 2012. He diagnosed lumbar sprain/strain and myospasm. In follow-up reports, Dr. Menon reviewed a May 19, 2012 MRI scan and x-ray of the lumbar spine and diagnosed lumbar degenerative disc disease, lumbar facet arthropathy, thoracic herniated nucleus pulposus and myospasm. Progress notes were also submitted noting appellant's treatment from May 14 to June 26, 2012.

The Board finds that the medical evidence of record establishes a sufficient diagnosis of lumbar sprain/strain, lumbar degenerative disc disease, lumbar facet arthropathy, thoracic herniated nucleus pulposus and myospasm. Given that appellant has established a diagnosed condition, the question becomes whether the May 9, 2012 incident caused her lumbar injury. Thus, she must submit rationalized medical evidence to establish that her diagnosed medical condition is causally related to the accepted May 9, 2012 employment incident.

While Dr. Menon's reports establish a sufficient diagnosis of lumbar sprain/strain, lumbar degenerative disc disease, lumbar facet arthropathy, thoracic herniated nucleus pulposus and myospasm, he failed to provide a rationalized opinion on the issue of causal relationship. He did not provide an adequate explanation of how the incident accepted in this case caused or

¹¹ *Thelma Rogers*, 42 ECAB 866, 869-70 (1991).

¹² *See Willie J. Clements*, 43 ECAB 244 (1991).

contributed to appellant's lumbar injury. Dr. Menon failed to adequately address her medical history or discuss any preexisting lumbar conditions. He merely recounted the incident as described by appellant, did not determine that her condition was work related and did not offer a rationalized opinion on the issue of causal relationship.¹³ 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.¹⁴ 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.¹⁵ Dr. Menon's reports do not meet that standard and are insufficient to meet appellant's burden of proof.

The remaining medical evidence of record is also insufficient to establish causal relationship between appellant's lumbar injury and the May 9, 2012 employment incident as the progress notes merely noted appellant's complaints and treatment but failed to provide any opinion on causal relationship. Moreover, it is unclear if the progress notes were signed by a physician as they contain an illegible signature.¹⁶ These notes lack probative medical value as the author(s) cannot be identified as a physician.¹⁷ The medical reports signed by physician's assistants and the functional capacity evaluation provided by physical therapists are also of no probative value as nurses, physician's assistants, physical and occupational therapists are not "physicians" as defined by FECA.¹⁸

In the instant case, appellant has established that the May 9, 2012 incident occurred as alleged. She has also established a firm medical diagnosis of lumbar sprain/strain, lumbar degenerative disc disease, lumbar facet arthropathy, thoracic herniated nucleus pulposus and myospasm. The record, however, is without rationalized medical evidence establishing a causal relationship between the accepted May 9, 2012 employment incident and appellant's lumbar injury. Thus, appellant has failed to establish her burden of proof.¹⁹

¹³ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹⁴ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁵ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁶ Nurses, physician's assistants, physical and occupational therapists are not "physicians" as defined by FECA, their opinions regarding diagnosis and causal relationship are of no probative medical value. 5 U.S.C. § 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

¹⁷ *See Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁸ *Supra* note 15.

¹⁹ The Board notes that a Form CA-16, authorization of medical care was not issued in this case. Upon return of the case record, OWCP shall determine whether appellant's initial medical care in the hospital emergency room should be authorized pursuant to 20 C.F.R. § 10.304, which provides that in cases involving emergencies or unusual circumstances, OWCP may authorize treatment in a manner other than as stated in this subpart.

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 established a clear diagnosis for her alleged injury, but did not meet her burden of proof to establish that her lumbar condition is causally related to the accepted May 9, 2012 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2012 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: October 25, 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