

FACTUAL HISTORY

On July 25, 2013 appellant, then a 57-year-old licensed practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on that day while caring for a patient who was resistive, she experienced neck pain radiating to her right shoulder.

In a July 27, 2013 note, Dr. Noemi G. Klayman, a Board-certified physiatrist, indicated that appellant was seen in the office for back pain/strain. She noted that appellant was being treated with anti-inflammatory medications, massage and heat. Dr. Klayman requested that appellant be excused from work until August 3, 2013.

In a July 25, 2013 medical report, Dr. Thomas Booker, a Board-certified physiatrist, reported that appellant presented for evaluation of a right neck injury she sustained after getting pulled by a patient on July 25, 2013. Appellant reported pain at the base of her right neck which radiates into her trapezius but with no pain into her right arm. Dr. Booker reported a decreased range of motion of her neck with flexion, extension, and lateral rotation and marked tenderness to palpation over muscles of right neck and shoulders. He opined that appellant has pain in her right neck, likely a strain after her injury.

In a July 27, 2013 medical report, Dr. Klayman noted that appellant saw Dr. Booker two days earlier for acute onset of pain. Appellant reported the history of injury as hurting herself at work on July 25, 2013 at two o'clock in the morning, when turning and pulling up a patient, who was combative. She stated that, while turning him, he was fighting and she turned around really fast to get away and felt a pull in her neck and pain started shooting down her shoulder from the neck scapular area approximately a half hour later. Appellant stated that the pain was now all the way down the side of her back to the low back. Her past medical/surgical history was noted. Examination revealed normal range of motion of shoulders, elbows and wrist with normal upper extremity strength; moderate tenderness from scapular region on right side through thoracic spine musculature on the right side; moderate muscle spasm throughout right side of her back; and mild-to-moderate swelling upper back paraspinal and thoracic paraspinal musculature. An assessment of back sprain/strain was provided. Dr. Klayman opined that appellant likely sustained a back sprain/strain when assisting a combative patient at her job (works as nurse) and was now experiencing severe muscle spasm of nearly her entire right back region. She advised that appellant be off work for a week and then be reevaluated prior to returning to work.

In an August 2, 2013 report, Dr. Sandy W. Doti, a Board-certified internist, reported that appellant felt stiffness turning head quick in response to a combative patient. She continued to work and later in the day became very stiff and had pain radiating to right scapula. Examination revealed reduced range of motion of neck flexion to the right and reduced right lateral motion with increased tone of right trapezius and no muscle tenderness. An assessment of cervicalgia was provided.

On August 20, 2013 OWCP noted that appellant's claim first appeared to be a minor injury that resulted in minimal or no lost time from work. It noted that the employing establishment paid continuation of pay and a limited amount of medical expenses was administratively approved. OWCP advised that appellant's claim was being formally adjudicated and noted that the medical evidence received was insufficient to support her claim as

there was no firm diagnosis from a physician. Appellant was advised of the type of information that must be submitted in a physician's report, including an opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. She was accorded 30 days to submit additional evidence.

In a July 25, 2013 note, Dr. Suprtiyo Das² reported that appellant, a B2 unit licensed practical nurse, was caring for an agitated patient in the unit, when patient pushed her and she had quick turn at her right back. He noted that she was having pain at right upper back radiating from right neck to right shoulder and right upper back. Range of motion restrictions and muscle tenderness was noted at right upper back and right neck. A diagnosis of muscle strain was provided.

In an August 19, 2013 report, Dr. Doti reported that appellant's neck pain has resolved and she was able to move her neck a baseline again.

By decision dated September 23, 2013, OWCP denied the claim on the grounds that appellant did not submit any medical evidence containing a firm medical diagnosis in connection with the accepted event.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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.³ 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.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁵

² Dr. Das' credentials are not of record.

³ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ See *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.⁶ The opinion of the physician must be based on a complete factual and medical background of the employee, 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.⁷ The weight of the 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.⁸ 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.⁹

ANALYSIS

OWCP accepted that on July 25, 2013 appellant was caring for a patient who was resistant to care and turning. It denied her claim that an injury occurred in the performance of duty on July 25, 2013 finding that she did not submit medical evidence containing a medical diagnosis in connection with the accepted event. The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on July 25, 2013. She did not submit medical evidence which described her patient care activities and explained, with medical rationale, how these activities would have physiologically caused a specific diagnosed condition.

In his July 25, 2013 medical report, Dr. Booker opined that appellant has pain in her right neck, likely a strain after her injury. He, however, did not offer a firm diagnosis, noting that she "likely [suffered] a strain after her injury." Thus, Dr. Booker's opinion is insufficient to establish appellant's claim.

Dr. Klayman noted that the history of injury and that appellant's pain, which started in her neck was now all the way down the side of her back to the low back. An assessment of back sprain/strain was provided in her note of July 27, 2013. In a report of the same date, Dr. Klayman opined that appellant likely sustained a back sprain/strain when assisting a combative patient at her job (works as nurse) and was now experiencing severe muscle spasm of nearly her entire right back region. She advised that appellant be off work for a week and then be reevaluated prior to returning to work. Dr. Klayman did not provide a firm diagnosis, noting that appellant "likely sustained a back sprain/strain." Additionally, she offered no rationale as to how or why appellant sustained a back condition when the pain started in her neck. Thus, Dr. Klayman's opinion is insufficient to establish appellant's claim.

⁶ See *J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

⁷ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *James Mack*, 43 ECAB 321, 329 (1991).

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

In an August 2, 2013 report, Dr. Doti reported that appellant felt stiffness turning her head quickly in response to a combative patient and that later in the day she became very stiff and had pain radiating to her right scapula. Examination revealed reduced range of motion of neck flexion to the right and reduced right lateral motion with increased tone of right trapezius and no muscle tenderness. An assessment of cervicgia was provided. Dr. Doti did not provide a clear statement explaining how the diagnosed condition occurred as a result of the accepted July 25, 2013 work incident. While his identification of cervicgia or neck pain was provided with detailed objective findings to support a firm diagnosed condition, Dr. Doti did not provide a rationalized medical opinion addressing how the July 25, 2013 work incident caused appellant to suffer a medical condition. In an August 19, 2013 report, he reported that appellant's neck pain resolved. Thus, Dr. Doti's opinion is insufficient to establish appellant's claim.

In a July 25, 2013 note, Dr. Das noted the history of injury, provided objective findings and diagnosed muscle strain. However, he provided only a vague diagnosis as he did not identify what muscle or groups of muscles were strained. Additionally, Dr. Das did not provide a rationalized medical opinion addressing how the July 25, 2013 work incident caused appellant to suffer a medical condition. Thus, his opinion is insufficient to establish appellant's claim.

The Board finds that appellant did not submit sufficient medical evidence which provided either a firm diagnosis or a rationalized explanation as to how the accepted incident caused or aggravated either a back or neck condition. Appellant therefore failed to establish that she has a medical condition resulting from the July 25, 2013 employment incident.

On appeal, appellant argued that her claim should be accepted as she complied with all of OWPC's requests. However, the medical evidence provided either did not contain a firm diagnosis or a rationalized explanation as to how the accepted incident caused or aggravated either a back or neck condition. Appellant also provided new evidence on appeal. The Board's jurisdiction, however, is limited to evidence that was before OWCP at the time it issued its final decision.¹⁰ Because this evidence was not before OWCP at the time it issued its September 23, 2013 decision, the Board may not consider this evidence for the first time on appeal.

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 met her burden of proof to establish that she sustained a medical condition on July 25, 2013 in the performance of duty.

¹⁰ 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the September 23, 2013 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: April 25, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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