

In a statement dated February 15, 2012, appellant indicated that she was attempting to pull down two mail hampers stacked on top of each other and fell down injuring her buttocks and low back.² She submitted out of work slips dated February 15 and 22, 2012 from a physician's assistant who diagnosed low back pain and advised that appellant was totally disabled from February 15 to March 1, 2012.

By letter dated March 14, 2012, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant's supervisor, Veronica Copeland, submitted a March 17, 2012 statement noting that on February 15, 2012 she was informed that appellant had fallen when attempting to knock down stacked hampers. Appellant had reported that her arms were bothering her and that she felt weak. Ms. Copeland noted that appellant was in distress but refused medical treatment and returned to her work duties.

Appellant submitted reports from a physician's assistant, dated February 15 to March 21, 2012, who treated her for low back pain. She reported that on February 14, 2012 she felt weakness in her shoulders while pulling down hampers from a shelf and fell onto her buttocks and low back. Appellant's history was significant for a repaired left rotator cuff tear and a right rotator cuff tear. The physician's assistant diagnosed lower back strain and a new tear of the left shoulder. He advised that appellant was totally disabled.

In a March 21, 2012 attending physician's report, the physician's assistant noted that on February 14, 2012 appellant was removing hampers and fell backward injuring her shoulders and back. He diagnosed low back pain and torn rotator cuff. The physician's assistant checked a box "yes" that appellant's condition was caused or aggravated by a work activity and she was totally disabled. In a duty status report dated March 21, 2012, he noted her status and advised that she was unable to work. A February 22, 2012 x-ray revealed degenerative spondylosis and grade 1 spondylolisthesis of L4 relative to L5 and loss of height of L3, age indeterminate. Appellant submitted a March 9, 2012 note from Dr. Peretz noting that appellant was out of work until further notice.

In an April 19, 2012 decision, OWCP denied the claim on the grounds that the medical evidence was insufficient to establish that a medical condition was diagnosed in connection with the claimed work injury or event.

Appellant's counsel subsequently requested reconsideration and asserted that the evidence was sufficient to establish the claim.³ Appellant submitted a February 17, 2012 report from Dr. Peretz who noted that appellant fell injuring her back and reinjuring her left shoulder.

² Appellant had been treated by Dr. Andrew M. Peretz, a Board-certified orthopedist, on June 17, 2011 for right shoulder pain due to a work-related left shoulder injury. Dr. Peretz noted a magnetic resonance imaging (MRI) scan of the right shoulder revealed full-thickness rotator cuff tear of the supraspinatus and recommended surgical intervention.

³ Appellant initially requested an oral hearing but later withdrew her request.

Dr. Peretz modified her restrictions due to her bilateral rotator cuff pathologies. In a February 17, 2012 report, he noted that appellant had work-related right shoulder rotator cuff tear and subacromial impingement. Dr. Peretz noted that conservative treatment had failed and recommended right rotator cuff repair and subacromial decompression. In a March 9, 2012 report, he noted that on February 14, 2012 appellant was pulling heavy hampers and fell injuring both shoulders and her right lower lumbar region. Dr. Peretz noted an MRI scan of the left shoulder revealed a recurrent rotator cuff tear which will require revisionary repair and decompression subacromially. In a March 21, 2012 report, he noted that appellant sustained a work-related injury on February 12, 2012. Dr. Peretz diagnosed chronic right rotator cuff tear and a recurrent left rotator cuff tear and opined that she was disabled from work due to the bilateral shoulder pathology. In an April 27, 2012 attending physician's report, he diagnosed bilateral rotator cuff tear and checked a box "yes" indicating that appellant's condition was caused or aggravated by her employment.

Appellant submitted an April 26, 2012 report from Dr. William Rohan, a Board-certified internist, who noted that on February 15, 2012 appellant was pulling down hampers at work when she lost her balance and fell onto her buttocks and low back. She reported pain into her thighs and weakness in her shoulders. Examination revealed tenderness to palpation in the lumbar region, no range of motion and no straight leg raises. Dr. Rohan diagnosed contusion of the back after a fall and a new left rotator cuff tear. He treated appellant on April 11, 2012. Dr. Rohan noted that her low back pain resolved but she had sustained a new left rotator cuff tear status post the incident. He opined that appellant sustained an injury while at work to her back which took a couple of months to recover, and a tear of the left rotator cuff causally related to the fall.

Appellant also submitted a July 26, 2012 report from Dr. Mary Dore, a Board-certified internist, who treated appellant for lumbar pain. Dr. Dore reported that appellant removed a hamper from a shelf at work and fell backward onto to her buttocks and lower back. Appellant noted findings of tenderness in the mid-to-lower lumbar area and limited range of motion. Dr. Dore diagnosed contusion of the low back after a fall and took appellant off work. She noted an x-ray of the lumbar spine revealed degenerative spondylosis and grade 1 spondylolisthesis at L4 related to L5 and loss of height at L3, age indeterminate and recommended physical therapy.

In a decision dated June 24, 2013, OWCP denied appellant's claim finding that she had failed to provide rationalized medical evidence establishing that the left rotator cuff tear and low back strain was causally related to the accepted work incident.

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 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon 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 first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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 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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

It is not disputed that appellant worked as a clerk and that on February 14, 2012 she was removing stacked mail hampers from a shelf and fell down. However, she has not submitted sufficient medical evidence to establish that her diagnosed low back injury and a recurrent left rotator cuff tear were caused or aggravated by the February 14, 2012 work incident.

Appellant submitted reports dated February 17 and March 9, 2012 from Dr. Peretz who noted that on February 14, 2012 appellant was pulling heavy hampers and fell backward injuring both shoulders and her right lower lumbar region. Dr. Peretz indicated that she had a work-related right shoulder rotator cuff tear and subacromial impingement. He noted an MRI scan of the left shoulder revealed a recurrent rotator cuff tear which would require surgery. Similarly, in a March 21, 2012 report, Dr. Peretz noted that appellant sustained a work-related injury on February 12, 2012. He noted that she had a chronic right rotator cuff tear and a recurrent left rotator cuff tear and was unable to work due to her bilateral shoulder pathology. Although Dr. Peretz supported causal relationship in a conclusory statement, he did not provide medical rationale explaining the basis of his opinion regarding the causal relationship between appellant's diagnosed conditions and the fall. For instance, he failed to explain how pulling hampers from a shelf would cause or aggravate the diagnosed conditions and why the condition was not caused by nonwork-related factors such as age-related degenerative changes. Therefore, this evidence is insufficient to meet appellant's burden of proof.

In an April 27, 2012 attending physician's report, Dr. Peretz diagnosed bilateral rotator cuff tear and checked a box "yes" indicating that appellant's condition was caused or aggravated by her work. The Board has held that an opinion on causal relationship which consists only of a

⁴ *Gary J. Watling*, 52 ECAB 357 (2001).

⁵ *T.H.*, 59 ECAB 388 (2008).

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

physician checking “yes” to a medical form report question on whether the claimant’s condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.⁷ A June 17, 2011 report from Dr. Peretz predated the injury of February 14, 2012 and is therefore insufficient to meet appellant’s burden of proof.

Appellant submitted a July 26, 2012 report from Dr. Dore who treated her for lumbar pain. Dr. Dore noted findings and diagnosed contusion of the low back after a fall. Appellant reported pulling a mail hamper off of a shelf while at work and falling onto to her buttocks and lower back. However, Dr. Dore appears merely to be repeating the history of injury as reported by appellant without providing her own opinion regarding whether appellant’s condition was work related.⁸ To the extent that Dr. Dore is providing her own opinion, she failed to provide a rationalized opinion explaining the causal relationship between appellant’s low back contusion and the factors of employment.⁹ Therefore, these reports are insufficient to meet appellant’s burden of proof.

Appellant submitted an April 26, 2012 report from Dr. Rohan, who noted that on February 14, 2012 appellant was pulling down hampers at work when she lost her balance and fell onto her buttocks and lower back. Dr. Rohan diagnosed contusion of the back after a fall and a new left rotator cuff tear. He opined that appellant sustained a back injury and a tear of the left rotator cuff causally related to the fall. The Board finds that, although Dr. Rohan supported causal relationship, he also did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant’s back and left shoulder conditions and the factors of employment.¹⁰ Therefore, this report is insufficient to meet appellant’s burden of proof.

Appellant submitted reports from a physician’s assistant dated February 15 to March 21, 2012 that are not countersigned by a physician. However, the Board has held that documents from a physician’s assistant are not considered medical evidence as physician’s assistants are not considered a physician under FECA.¹¹ Thus, the treatment records from the physician’s assistant are of no probative medical value in establishing appellant’s claim.

The remainder of the medical evidence, including an x-ray of the lumbar spine, fail to provide an opinion on the causal relationship between appellant’s job and her diagnosed lumbar

⁷ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

⁸ *See Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁹ *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).

¹⁰ *See id.*

¹¹ *See 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); 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).

and left shoulder injury. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's 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. Causal relationships must be established by rationalized medical opinion evidence.¹² Appellant failed to submit such evidence, and OWCP therefore properly denied appellant's claim for compensation.

On appeal, appellant's counsel disagrees with OWCP's decision denying the claim and asserts that appellant submitted sufficient evidence to establish her claim. As noted above, the medical evidence, although supportive of her claim, fails to establish that appellant's diagnosed conditions were causally related to the employment incident rather than degenerative changes. This is particularly important noting the preexisting pathology. Reports from appellant's physicians failed to provide sufficient medical rationale explaining why appellant's low back and left shoulder conditions were caused or aggravated by the February 14, 2012 fall at work.

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.

¹² See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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