United States Department of Labor
Employees' Compensation Appeals Board

E.F., Appellant	)	
and	)	**Docket No. 14-776**
	)	**Issued: November 14, 2014**
DEPARTMENT OF VETERANS AFFAIRS, ALBANY VETERANS HOSPITAL, Albany, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 11, 2014 appellant, through counsel, filed a timely appeal from the December 16, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 a traumatic injury in the performance of duty on June 11, 2013.

FACTUAL HISTORY

On June 12, 2013 appellant, then a 48-year-old nurse, filed a traumatic injury claim alleging that on June 11, 2013 she sustained cervical neck pain with radiating arm numbness while turning a patient over in bed. The patient pushed against her and she felt a pop in her neck.

[1] 5 U.S.C. § 8101 *et seq.*

Appellant noted that she previously underwent a cervical laminectomy. She stopped work on June 11, 2013.

In a June 11, 2013 emergency room report, Dr. Dianna Langdon, Board-certified in emergency medicine, noted that appellant was turning a large patient over in bed when she felt a pop and sudden pain in her neck with numbness radiating down the right arm. She also noted that appellant had a C4-5 cadaveric laminectomy in January 2013 and had done well after surgery. Dr. Langdon stated that, before her surgery, appellant had right arm numbness that was similar to her current symptoms. She diagnosed cervical neck pain with radiation arm numbness. OWCP also received a June 12, 2013 disability certificate and a report of the same date from a nurse.

On June 24, 2013 Chendell Sheehan, a human resources specialist with the employing establishment, controverted the claim. She noted that an investigation showed that appellant did not follow proper procedures in moving the patient. A June 12, 2013 report of contact, stated that appellant was alone when moving the patient and that she should have asked for help.

By letter dated July 3, 2013, OWCP advised appellant that additional evidence was needed to establish her claim.

In July 9 and 18, 2013 disability certificates, Dr. John Thomas Whalen, a Board-certified orthopedic surgeon, noted that appellant could not return to work. In a July 18, 2013 narrative report, he noted that she was seen for a new workers' compensation injury. Dr. Whalen noted that appellant was doing very well after a January 2, 2013 anterior cervical discectomy and fusion at C5-6. He advised that she had a work injury on June 11, 2013 while treating a large patient, who turned and pinned her right hand under and pulled her forward. Appellant noted feeling a pop in her neck with neck pain in the posterior scapular region going down the right arm. She reported ongoing pain with no improvement with numbness and weakness in her right hand. On examination, the neck was tender. Range of motion was 20 degrees of flexion and extension with 50 degrees of rotation bilaterally. Gait was normal. Motor strength was 5/5 in all muscle groups except for the right biceps, 5-/5 and right triceps, 3/5. Sensation was grossly intact throughout and plantar reflexes were down going. X-rays showed postoperative changes with intact hardware. Dr. Whalen advised that the fusion was healed or healing. There was low anterior spurring and perhaps a slight loss of disc height at C6-7. Dr. Whalen stated a June 26, 2013 MRI scan showed that appellant had a herniated disc at C6-7 with bilateral herniation into the foramen and foraminal stenosis bilaterally, greater on the right. Postsurgical changes at C5-6 looked fine.[2] Dr. Whalen diagnosed a herniated disc below the fusion at C6-7 and advised that appellant was totally disabled from her job causally related to her work injury of June 11, 2013. He answered "yes" in response to whether the incident that appellant described was the competent cause of her injury and whether her complaints were consistent with her injury. Dr. Whalen recommended surgery if her condition did not improve.

In an August 7, 2013 decision, OWCP accepted that turning over a patient caused him to turn against appellant but denied her claim. It found, however, that the medical evidence did not establish that her claimed condition was causally related to the accepted work incident.

[2] The record contains a June 26, 2013 magnetic resonance imaging (MRI) scan report from Dr. Tariq N. Gill, a Board-certified diagnostic radiologist. OWCP also received physical therapy notes.

On August 14, 2013 appellant requested a review of the written record. In an August 6, 2013 report, Dr. Whalen noted that appellant returned for follow up of the herniated disc at C6-7 below the C5-6 fusion that was performed on January 2, 2013. He diagnosed herniated disc at C6-7, greater on the right, below the C5-6 fusion. Dr. Whalen requested authorization for an anterior cervical hardware removal, exploration of fusion and anterior cervical discectomy and fusion with instrumentation and bone grafting, C5 to C7. He opined that appellant was totally disabled due to her June 11, 2013 work injury. Dr. Whalen advised that the incident was the cause of her injury and her complaints were consistent with her injury.

In an August 14, 2013 report, Dr. Whalen noted treating appellant for cervical radiculopathy. He opined that the June 11, 2013 incident, when a "350 pound patient pushed against her, pinning her arm and pulling on her neck, directly caused the cervical radiculopathy to her neck and herniated disc at C6-7." Dr. Whalen stated that the June 26, 2013 MRI scan showed a herniated disc at C6-7. He noted that x-rays taken on January 17 and April 18, 2013, after her January 2, 2013 surgery, revealed no herniated disc at C6-7. Dr. Whalen opined that appellant was totally disabled and needed surgery. On September 3, 2013 he repeated his request for surgery authorization. Dr. Whalen reiterated that appellant was totally disabled due to her work injury of June 11, 2013. He also provided a September 3, 2013 disability certificate noting her total disability.

On September 17, 2013 appellant withdrew her request for a review of the written record and requested reconsideration. OWCP received copies of evidence previously provided by the employing establishment, controverting the claim. It also received copies of medical reports of record.

In September 14, 2013 emergency room notes, Dr. Nadia Jandali, Board-certified in emergency medicine, noted that appellant was seen for complaints of nausea, vomiting and numbness. She diagnosed anxiety, hyperventilation (resolved), nausea, dehydration, acute on chronic neck pain. OWCP also received a September 14, 2013 electrocardiogram, which revealed sinus rhythm and laboratory reports.

In an October 24, 2013 report, Dr. Whalen noted that appellant was seen in follow up for herniated disc at C6-7 below the C5-6 fusion done on January 2, 2013. He advised that she had a work injury on June 11, 2012 and her pain continued and was worsening. Dr. Whalen noted that the employing establishment terminated appellant because she could not do her job and her car was repossessed. Appellant had neck pain and pain in the right arm as well as weakness and noted cramping in the dorsum of the forearm. Dr. Whalen examined her and found that she walked with a normal gait and sensation was subjectively diminished in the dorsum of the forearm and central hand. Appellant had weakness of the right biceps of "5-/5" and "3/4" right triceps. Dr. Whalen diagnosed herniated disc of C6-7 on the right greater than the left below the C5-6 fusion. He noted that she had signs and symptoms consistent with right C7 radiculopathy and that an MRI scan showed a herniated disc. Dr. Whalen repeated his request for surgery and reiterated that appellant was totally disabled causally related to her work injury of June 11, 2013. He stated that it was his professional opinion that the need for treatment and surgery was causally related to her work injury of June 11, 2013.

On November 21, 2013 OWCP received an undated statement from appellant in which she described the June 11, 2013 incident. Appellant explained that she answered a call light

from a 350-pound patient who was alert and oriented. The patient turned himself over on his side, and she was rubbing his lower back when his hand slipped off the side rail and his full body weight pinned her right arm underneath him. Appellant explained that this pulled on her neck causing immediate neck pain radiating down to her right shoulder and arm causing right hand numbness. She stated that she followed appropriate policy and procedure. Appellant advised that she did not have a herniation of her C6-7 disc before the incident. She also noted that her discharge was not a disciplinary discharge and she did not engage in misconduct or delinquency.[3]

By decision dated December 16, 2013, OWCP denied modification of the prior decision. It accepted the June 11, 2013 incident: "while turning [patient] over to rub his back [patient] pushed against me." OWCP found that the medical evidence did not provide sufficient reasoning to explain how the herniated disc at C6-7 was caused or contributed to by the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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[5] and that an injury was sustained in the performance of duty.[6] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the 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.[8] 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.[9]

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

[3] Also submitted was a November 5, 2013 letter from the employing establishment, terminating her, effective November 15, 2013, due to her inability to perform her full range of duties.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Joe D. Cameron,* 41 ECAB 153 (1989).

[6] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

[9] *See id*. For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10]

ANALYSIS

Appellant alleged that on June 11, 2013, she was turning a patient over in bed when he pushed against her. She explained that she was not lifting the patient but rather assisting him when his arm fell upon her and pulled on her neck. OWCP accepted that the June 11, 2013 incident occurred.

The Board finds the case is not in posture for decision with regard to the medical evidence. In this case, Dr. Whalen explained that he previously treated appellant for an injury to her cervical spine, which was not work related and she underwent cervical fusion surgery in January 2013. He explained that the incident at work on June 11, 2013 caused a herniated disc at C6-7 and requested authorization for surgery. In a July 18, 2013 report, Dr. Whalen advised that appellant sustained a work injury on June 11, 2013 when a large patient turned and pinned her right hand under him which pulled her forward. He related that she felt a pop in her neck and experienced immediate pain in the neck, posterior scapular region and down the right arm. Dr. Whalen examined appellant, reviewed diagnostic reports and opined that she sustained a herniated disc at C6-7 with bilateral herniation into the foramen with foraminal stenosis, worse on the right. He advised that appellant was totally disabled from her job causally related to her work injury of June 11, 2013. The Board notes that Dr. Whalen offered a similar opinion on causal relationship in his August 6, September 3 and October 24, 2013 reports.

In his August 14, 2013 report, Dr. Whalen again opined that the incident of June 11, 2013, when a "350[-]pound patient pushed against her, pinning her arm and pulling on her neck, directly caused the cervical radiculopathy to her neck and herniated disc at C6-7." He reiterated that appellant was totally disabled and required surgery. Dr. Whalen noted that a June 26, 2013 MRI scan obtained following the incident showed a herniated disc at C6-7 while x-rays taken on January 17 and April 18, 2013, revealed no herniated disc at C6-7. The Board finds that, while Dr. Whalen's opinions are not sufficiently rationalized[11] to meet appellant's burden of proof, they are sufficient to require further medical development by OWCP.[12] The Board will remand the case for review by an OWCP medical adviser and an opinion on whether the June 11, 2013 incident caused or aggravated a cervical condition at C6-7. Following this and any other development deemed necessary, OWCP shall issue a *de novo* decision in the case.

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

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

[12] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978). The Board notes that OWCP did not have an OWCP medical adviser review the medical evidence. While OWCP found that Dr. Whalen's reports were insufficient to establish the claim, OWCP procedures note that the lack of a well-reasoned or fully responsive report from a treating physician may suggest that a referral to an OWCP medical adviser for clarification or a second opinion examination is warranted. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.7(d) (September 2010).

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Issued: November 14, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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