United States Department of Labor
Employees' Compensation Appeals Board

W.W., Appellant	)	
and	)	**Docket No. 15-1130**
	)	**Issued: August 7, 2015**
DEPARTMENT OF HOMELAND SECURITY, CITIZENSHIP & IMMIGRATION SERVICES, Lee's Summit, MO, Employer	)	

Appearances:
Daniel Goodkin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 27, 2015 appellant, through counsel, filed a timely appeal from a March 19, 2015 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 has met her burden of proof to establish an injury in the performance of duty on October 15, 2012.

FACTUAL HISTORY

On October 16, 2012 appellant, then a 50-year-old segment information security officer, filed a traumatic injury claim (Form CA-1) alleging that on October 15, 2012 she experienced

[1] 5 U.S.C. § 8101 *et seq.*

pain, numbness, and tingling in her left lower back, left hip, and left leg after standing up from her chair in the performance of duty.

In an emergency department report dated October 16, 2012, Dr. James Hart, a Board-certified osteopath, diagnosed appellant with sciatica.

On October 17, 2012 appellant underwent surgery, including an L3-4 microdiscectomy, fluoroscopy, and microscopic techniques for removal of a herniated disc. Dr. Bradley A. Hiser[2] diagnosed appellant with an acute herniated L3-4 left-sided disc with radiculopathy and neurologic deficit. He described the procedure and did not indicate any surgical complications.

In a report of the same date, Dr. Hiser noted that appellant told him that she had an acute onset of pain on October 15, 2012 when she arose after bending under her desk to retrieve paper from a printer. Appellant stated that the pain started in her back and radiated down to the anterior portion of her left leg. Dr. Hiser noted that appellant had previously had back surgery of a right L3-4 and L4-5 discectomy. Appellant went home and awoke the next day with numbness in her left leg and opted to go to a medical facility.

On October 22, 2012 Dr. Hiser recommended work restrictions for appellant of no twisting, no lifting over 10 pounds, and no bending further than to brush her teeth.

In a record of a telephone conversation dated October 30, 2012, appellant's supervisor told an OWCP representative that appellant did not have to bend down to take papers off her printer when seated, and that she could just reach over and pick them up. The desk was approximately 2.5 feet high while the printer was on a stand 8.5 inches high. The difference between the top of the desk and the top of the printer was approximately 10 inches. Appellant's supervisor stated that appellant had mentioned her back being injured and hurting, and had complained regarding her back about two weeks prior to the date of injury.

In a report dated November 30, 2012, Dr. Lisa Hermes, Board-certified in physical medicine and rehabilitation, noted that appellant underwent a left L3-4 discectomy on October 17, 2012 with Dr. Hiser. She was later readmitted for worsening low back pain and left leg weakness, and underwent a second surgical procedure in the form of an L3-4 fusion with cerebrospinal fluid leak repair on November 20, 2012. Dr. Hermes diagnosed appellant with a status post L3-4 transforaminal lumbar interbody fusion (TLIF) with an intraoperative cerebral spinal fluid leak repair; left L4 radiculopathy resulting in lower extremity weakness; postoperative pain; morbid obesity; and gait disturbance.

In a diagnostic report dated November 29, 2012, Dr. Jessica Sanchez, a Board-certified radiologist, examined the results of x-rays of appellant's lumbar spine. She noted postsurgical changes of a transpedicular rod and screw fixation of L3 and L4 with an interbody spacer. Dr. Sanchez further noted degenerative disc disease of L4-5 and L5-S1.

On December 3, 2012 appellant claimed compensation for leave without pay from December 3, 2012 through January 11, 2013. In separate forms dated December 10, 2012 and

[2] Dr. Hiser's certification in a medical specialty could not be confirmed with the American Board of Medical Specialties or the American Osteopathic Association.

January 15, 2013, she also claimed compensation for leave without pay from January 14 through February 1, 2013.

In an attending physician's report dated December 19, 2012, Dr. Hiser diagnosed appellant with a herniated nucleus pulposis. He checked a box stating that he believed appellant's condition was caused or aggravated by an employment activity, explaining that appellant reported her symptoms started during the workday after performing work-related activities. Dr. Hiser noted that appellant had not been advised to return to work, and stated that appellant had no known history of physical impairment.

By letter dated December 21, 2012, OWCP notified appellant of the evidence needed to establish her claim. It stated that Dr. Hiser's opinion on causal relationship was of reduced probative value because he did not provide a rationalized medical opinion discussing the relationship of her preexisting conditions to her current claimed injury. OWCP asked appellant to submit medical records relating to treatment of her back from February 28, 2008 through October 14, 2012, and afforded appellant 30 days to submit additional evidence.

In a report dated December 11, 2012, Dr. Hiser stated, "Prior to the incident on October 15, 2012, [appellant] had known lumbar spondylitic disease and obesity with previous microdiscectomy for herniated disc and radicular symptoms that had resolved. Prior to the incident, [appellant] had minimal symptoms from her disease and was able to perform daily activities. During the incident, she bent over to pick a paper off of the printing machine and had the acute onset of radicular symptoms of pain and numbness of her left lower extremity which progressed to weakness. This history is suggestive of an acute herniation of nucleus pulposis which was verified by [magnetic resonance imaging]. There is a temporal association with the incident and was therefore the inciting cause of the herniated nucleus pulposis."

In a letter dated January 4, 2013, Dr. Michael G. Francis stated that appellant had not been treated for any back issues or treatments during the time period from February 28, 2008 through October 14, 2012.[3]

On January 18, 2013 appellant stated that her injury of an acute L3-4 disc herniation occurred at work on October 15, 2012 when she bent and twisted down and to the left to reach under her work surface and obtain documents off her printer.

By decision dated March 26, 2013, OWCP denied appellant's claim for compensation. It noted that Dr. Hiser had stated that there was no history or evidence of a concurrent or preexisting injury in his attending physicians' reports. OWCP stated that appellant had not advised her physician that she had preexisting conditions of her back, and therefore Dr. Hiser did not differentiate between these conditions and the symptoms allegedly caused by standing up at her desk. It further noted that there were inconsistencies between her description of how the injury occurred and other evidence in the case file, and that her condition could not have resulted from the claimed event.

On November 21, 2013 appellant, through counsel, requested reconsideration of OWCP's March 26, 2013 decision. Counsel argued that appellant had informed Dr. Hiser of her

[3] Dr. Francis' certification in a medical specialty could not be confirmed with the American Board of Medical Specialties or the American Osteopathic Association.

preexisting condition and that Dr. Hiser had opined that this condition had resolved prior to October 15, 2012. Additionally, he stated that OWCP acted improperly in stating that her injury could not have occurred as a result of the alleged work event.

By decision dated March 17, 2014, OWCP evaluated appellant's claim on the merits and denied modification of its March 26, 2013 decision. It noted that appellant's physician had not addressed the mechanism of injury, but had attributed causal relationship to the employment due to a "temporal association." OWCP further noted that appellant had, subsequent to the incident of October 15, 2012, suffered a larger herniation at L3-4 even though she was not working and was under restrictions, and that her physician had not provided a precipitating factor for the new herniation, which raised questions about whether her herniations were related to an underlying degenerative disorder rather than any specific work activity.

On September 4, 2014 appellant, through counsel, requested reconsideration of OWCP's March 17, 2014 decision. He quoted a medical report from Dr. Hiser dated July 11, 2014, but the report was not attached.

By decision dated December 18, 2014, OWCP evaluated appellant's claim on the merits and denied modification of its March 17, 2014 decision. It noted that appellant had not submitted the purported report of Dr. Hiser dated July 11, 2014.

On December 23, 2014 appellant, through counsel, requested reconsideration of OWCP's December 18, 2014 decision. He attached the July 11, 2014 report of Dr. Hiser. In this report, Dr. Hiser stated:

> "[Appellant] did have a previous history of lumbar disease treated by another physician. I will comment on the contributing factors for this patient as I have come to know her in treating her beginning in October 2012. Patient did have factors for contribution to lumbar dis[c] disease including morbid obesity, tobacco and nicotine use and the previously noted history of lumbar disease. Concerning the incident described when the patient had the onset of her symptoms after bending over to retrieve a paper from a printer on the floor, any movement that requires bending at the waist puts the lumbar spine at a mechanical disadvantage. This shifts the fulcrum of the weight to the lumbar spine and the paraspinal musculature versus being on the larger joints and muscles of the pelvis. This change of force in my medical opinion exacerbated her underlying pathology causing the dis[c] herniation.[…] Concerning the need for repeat surgery, there is a known 15 percent to 20 percent risk of repeat dis[c] herniation after any microdis[c]ectomy procedure. With the patient's predisposing factors and history of multiple lumbar surgeries and collapse of the dis[c] space, it was deemed appropriate to proceed with a decompression and fusion to treat the patient's symptoms and prevent recurrence of her symptoms at that time. Patient had motor weakness and it was felt that any further progression of disease or reherniation would leave her at a higher risk of unrecoverable neurologic injury."

By decision dated March 19, 2015, OWCP evaluated appellant's claim on the merits and denied modification of its December 18, 2014 decision. It stated that Dr. Hiser's opinion of July 11, 2014 was not supported by medical rationale containing an explanation of the nature of the relationship between her diagnosed condition and specific employment factors, and that it

simply stated that she did have factors contributing to her lumbar disc disease. OWCP noted that he did not provide a detailed discussion of her preexisting back conditions or a discussion based on objective findings and including medical rationale as to how the work injury of October 15, 2014 caused or aggravated her back condition, and as such it was of diminished probative value.

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 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.[5] 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.[6]

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.[7] 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]

The claimant has the burden of establishing by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[10] An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[11]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[12] Rationalized medical

[4] 5 U.S.C. § 8101 *et seq*.

[5] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

[6] *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

[7] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

[8] *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

[9] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 5.

[10] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[11] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[12] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.[13] 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.[14]

ANALYSIS

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

In its March 19, 2015 decision, OWCP found that appellant had not submitted sufficient evidence to establish a causal relationship between an incident of October 15, 2012 and her diagnosed back conditions. The Board finds that the medical evidence of record, while not sufficient to discharge appellant's burden of proof, is sufficient to require further development.

In a report of July 11, 2014, Dr. Hiser gave an overview of appellant's history of preexisting conditions, described the October 15, 2012 incident and explained in biomechanical terms how it caused or aggravated her current condition, and explained the need for repeat surgery shortly thereafter. In a report dated December 11, 2012, he stated:

> "Prior to the incident on October 15, 2012, [appellant] had known lumbar spondylitic disease and obesity with previous microdiscectomy for herniated disc and radicular symptoms that had resolved. Prior to the incident, [appellant] had minimal symptoms from her disease and was able to perform daily activities. During the incident, she bent over to pick a paper off of the printing machine and had the acute onset of radicular symptoms of pain and numbness of her left lower extremity which progressed to weakness. This history is suggestive of an acute herniation of nucleus pulposis which was verified by [magnetic resonance imaging]."

Dr. Hiser explained that physiologically any movement that required bending at the waist placed the lumbar spine at a mechanical disadvantage, as this shifted the fulcrum of the weight to the lumbar spine and the paraspinal musculature rather than on the larger joints and muscles of the pelvis. He concluded that it was this change of force that exacerbated appellant's underlying pathology causing the disc herniation.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[15] While none of the reports of appellant's physicians were completely rationalized, they are consistent in indicating that appellant sustained employment-related injuries on October 15, 2012 and are not contradicted by any medical evidence of record. Therefore, while the reports

[13] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

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

[15] *L.C.*, Docket No. 12-941 (issued October 1, 2012); *Russell F. Polhemus*, 32 ECAB 1066 (1981).

are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between appellant's claimed conditions and the employment incident of October 15, 2015, and are sufficient to require OWCP to further develop the medical evidence.[16]

On remand, OWCP should refer appellant, the case record and a statement of accepted facts to an appropriate specialist for an evaluation and a rationalized medical opinion regarding her condition and possible aggravation of preexisting conditions due to the incident of October 15, 2015. After such further development of the case record as OWCP deems necessary, a *de novo* decision shall be issued.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: August 7, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[16] *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, 41 ECAB 354, 360 (1989).