United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
and	)	**Docket No. 14-2074**
	)	**Issued: February 9, 2015**
DEPARTMENT OF AGRICULTURE, FOOD & CONSUMER SERVICE, Parkersburg, WV, Employer	)	

Appearances:
Debra Hauser, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 30, 2014 appellant, through her attorney, filed a timely appeal from a June 4, 2014 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 additional medical conditions related to her March 2, 2010 work injury.

FACTUAL HISTORY

On March 30, 2010 appellant, then a 55-year-old program specialist, filed a traumatic injury claim alleging that she sustained multiple injuries at work on March 2, 2010 when the

[1] 5 U.S.C. §§ 8101-8193.

vehicle in which she was a passenger was rear-ended by another vehicle.[2] OWCP accepted her claim for thoracic or lumbosacral neuritis or radiculitis, lumbar sprain, cervicalgia, lumbago, and degeneration of lumbar or lumbosacral intervertebral disc. Appellant stopped work on March 15, 2010 and was placed on continuation of pay.[3]

In a March 25, 2010 report, Dr. Juan L. Zamora, an attending Board-certified pathologist, indicated that appellant presented complaining of lower back pain radiating to both legs, but worse on the right with numbness and tingling. Appellant indicated to him that she was a front seat passenger in a vehicle which was slowing down to make a turn when another vehicle hit her vehicle from the back. Dr. Zamora stated that she developed pain in her lower back after the accident and that she had been seen by Dr. David Bauer, a Board-certified orthopedic surgeon, who prescribed her with Flexeril and an anti-inflammatory medication.[4] He indicated that no definitive diagnosis had been provided by Dr. Bauer. Upon physical examination, Dr. Zamora indicated that there was paresthesia of the right L5 and S1 dermatomes. The deep reflexes of the lower extremities were both equal and the range of motion was restricted and tender. Dr. Zamora stated that there was muscle spasm and tenderness to palpation over the paravertebral muscles. The Milgram's test was positive and the straight leg rise test was also positive for pain at 30 degrees on the right. Dr. Zamora diagnosed lumbar spine radiculitis, lumbar spine strain and sprain, and lumbar spine, rule out disc disease.

In a May 21, 2010 report, Dr. Francisco Batlle, an attending Board-certified neurosurgeon, stated that appellant reported being involved in a motor vehicle accident on March 2, 2010 which caused acute onset of low back pain. Appellant described a "constant deep ache" with "intermittent shooting pains" mainly into the right leg with associated numbness and tingling in a nondermatomal distribution. Dr. Batlle indicated that he reviewed an April 8, 2010 magnetic resonance imaging (MRI) scan testing of appellant's lumbar spine which demonstrated a spondylolisthesis of L4 and L5, approximately two to three millimeters without change in subluxation with flexion or extension views. There was a four-millimeter broad-based disc protrusion with bilateral foraminal stenosis, right side greater than left, and a loss of lumbar lordosis which was probably secondary to muscle spasms. Dr. Batlle further noted that the testing did not show significant disc desiccation and that the disc space was maintained at L4-5. He diagnosed lumbar disc displacement, lumbar radiculitis, lumbago, and lumbar myofascial injury. Dr. Batlle indicated that appellant was not a surgical candidate.

[2] Appellant was wearing a seat belt at the time of the accident, but her body was thrown forward by the impact. The air bags in the vehicle did not inflate and there was some minor damage to the vehicle's bumper due to the accident.

[3] It appears that appellant used leave to cover her absences after her continuation of pay expired. Beginning in late April 2010, the employing establishment accommodated her with limited-duty work.

[4] Dr. Bauer obtained x-rays on March 15, 2010 which showed normal alignment of the cervical spine, but loss of the normal lordosis. Disc space height was slightly decreased with anterior osteophytes at C4 through C7. Lumbar spine x-rays taken on that same date showed normal alignment with no evidence of spondylolysis or spondylolisthesis. Lumbar disc space height was preserved and sacroiliac joints were normal, but moderate degenerative changes were seen.

In an August 24, 2010 report, Dr. Zamora noted that appellant reported some improvement in her lumbar spine pain but that the pain still radiated down her right leg. He diagnosed lumbar spine spondylolisthesis, lumbar spine disc displacement, lumbar spine joint hypertrophy, and lumbar spine radiculopathy.

In a February 8, 2011 report, Dr. Bernie L. McCaskill, an attending Board-certified orthopedic surgeon, stated that appellant's chief complaint was intermittent, diffuse lower back pain with radiating diffuse right leg pain. Appellant also reported a history of chronic and intermittent neck and upper back pain that was not affected by her March 2, 2010 vehicular accident. Dr. McCaskill diagnosed spondylogenic lumbosacral spine pain associated with chronic right lower extremity pain noting that the anatomic etiology was undetermined.

The findings on January 27, 2012 MRI scan testing of appellant's lumbar spine showed a two-millimeter right paracentral disc protrusion at the L5-S1 level which came in close proximity to the right first sacral nerve root, and a two-millimeter broad-based central disc protrusion at L4-5 with moderate facet arthropathy resulting in left L4-5 formaminal narrowing.

In an August 13, 2013 report, Dr. Deepak V. Chavda, an attending Board-certified orthopedic surgeon, indicated that he was examining appellant for the first time and noted that appellant reported that she had a motor vehicle accident back in 2010 when she was a passenger in a vehicle that was rear-ended at a stop light by a vehicle traveling at a speed "greater than 5 to 10 miles per hour." Appellant described an achy, stabbing pain that shot down her legs to her feet with some numbness and tingling, right side more than left. Dr. Chavda indicated that, upon physical examination of the cervical spine, she exhibited point tenderness to the cervical paraspinal musculature and spasm bilaterally in both levator scapulae and trapezium, right more than left. There was limitation on full flexion and extension of the cervical spine with a decrease in left and right lateral side bending. Dr. Chavda indicated that examination of the lumbar spine showed no point tenderness upon palpation of the lumbar paraspinous musculature. There was positive straight leg raising on the right side at 60 degrees and negative straight leg raising at 90 degrees on the left side. Appellant had full dorsalis pedis and posterior tibial pulses bilaterally. Dr. Chavda diagnosed chronic low back pain and lumbago with lumbosacral disc disorder, lumbosacral sprain/strain, bilateral leg radiculopathy (right more than left), possible facet arthropathy, bilateral sacroiliac joint pain (right more than left), cervicalgia with trapezium and levator scapulae, and rule out herniated disc with radiculopathy.

Dr. Chavda submitted an amended notation on August 21, 2013 which stated, "Based on my examination, medical records, and imaging studies, I request upgrade of [Department of Labor] codes to include facet arthropathy (724.8), herniated disc cervical (722.0) with radicular pain (723.4), bilateral [sacroiliac] syndrome (720.2), sacroiliitis (847.3), sprain of the sacrum (824.6), and disorders of the sacrum (724.6)."

Appellant requested that the additional conditions related to her March 2, 2010 work injury be accepted to include the conditions denoted in Dr. Chavda's August 21, 2013 addendum report.

On May 20, 2014 appellant's case file was forwarded to Dr. Ronald Blum, a Board-certified orthopedic surgeon and OWCP medical adviser, to determine if the new conditions claimed by appellant were related to her March 2, 2010 work injury.

In a report dated May 22, 2014, Dr. Blum provided a summary of appellant's factual and medical history. He discussed the contents of Dr. Chavda's August 13, 2013 report and his August 21, 2013 addendum. Dr. Blum noted, "It is my opinion the information in the record does no[t] support the requested upgrades including facet arthropathy, herniated cervical disc, and cervical radicular pain. It is my opinion Dr. Chavda's requested upgraded diagnoses are the result of aging and not the result of the accepted work[-]related injury of March 2, 2010." Dr. Blum also stated, "It is also my opinion the requested upgrade to include sacral sprain is medically reasonable. The remainder of requested sacral diagnoses are medically redundant."

In a June 4, 2014 decision, OWCP expanded the accepted conditions in her case to include the condition of "sacral sprain."

In another June 4, 2010 decision, OWCP found that the other conditions for which appellant had requested an upgrade had been disallowed. It discussed Dr. Chavda's August 13, 2013 report and his August 21, 2013 addendum as well as the May 22, 2014 report of Dr. Blum. OWCP stated:

> "It is recommended that … facet arthropathy (724.8); herniated disc cervical (722.0) with radicular pain (723.4); bilateral [sacroiliac] syndrome (720.2) conditions be denied as the medical evidence of record does not support that these conditions claimed are due to the March 2, 2012 work injury.
>
> Your claim has been accepted for sacral sprain."

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 timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any specific condition for which compensation is claimed are causally related to the employment injury.[5] The medical evidence required to establish a causal relationship between a specific condition and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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]

[5] *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

[6] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

OWCP procedure provides that an OWCP medical adviser's primary medical functions are evaluating medical evidence and interpreting physician reports. The claims examiner seeks evaluation from the medical adviser in order to proceed with developing and weighing the medical evidence. The claims examiner must always maintain responsibility for the case and should not consult the medical adviser to adjudicate claims or determine benefit entitlement, as these are primary functions of the claims examiner. The medical adviser has no authority to decide the facts in a case, as this is a function of the claims examiner. However, the medical adviser may state whether an accepted incident was competent to produce the injury claimed.[7]

ANALYSIS

On March 30, 2010 appellant filed a traumatic injury claim alleging that she sustained multiple injuries at work on March 2, 2010 when the vehicle in which she was a passenger was rear-ended by another vehicle. OWCP accepted her claim for thoracic or lumbosacral neuritis or radiculitis, lumbar sprain, cervicalgia, lumbago, and degeneration of lumbar or lumbosacral intervertebral disc.

Appellant received treatment for her medical condition by numerous attending physicians. In an August 13, 2013 report, Dr. Chavda, an attending Board-certified orthopedic surgeon, indicated that he was examining her for the first time and noted that she reported that she had a motor vehicle accident back in 2010 when she was a passenger in a vehicle that was rear-ended at a stop light by a vehicle traveling at a speed "greater than 5 to 10 miles per hour." He reported his findings on examination and diagnosed chronic low back pain and lumbago with lumbosacral disc disorder, lumbosacral sprain/strain, bilateral leg radiculopathy (right more than left), possible facet arthropathy, bilateral sacroiliac joint pain (right more than left), cervicalgia with trapezium and levator scapulae, and rule out herniated disc with radiculopathy.

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Appellant requested that the conditions related to her March 2, 2010 work injury be upgraded to include the conditions denoted in Dr. Chavda's August 21, 2013 addendum report. On May 22, 2014 Dr. Blum, a Board-certified orthopedic surgeon and OWCP medical adviser, noted, "It is my opinion the information in the record does no support the requested upgrades including facet arthropathy, herniated cervical disc, and cervical radicular pain. It is my opinion Dr. Chavda's requested upgraded diagnoses are the result of aging and not the result of the accepted work-related injury of March 2, 2010." Dr. Blum also stated, "It is also my opinion the requested upgrade to include sacral sprain is medically reasonable. The remainder of requested sacral diagnoses are medically redundant." In a June 4, 2014 decision, OWCP denied appellant's request to expand the claim beyond the acceptance of a sacral sprain.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.8(b), (c) (September 2010).

The Board finds that appellant has not met her burden of proof to establish that additional medical conditions should be accepted due to her March 2, 2010 work injury. Appellant did not establish that the conditions of facet arthropathy, herniated cervical disc with radicular pain, bilateral sacroiliac syndrome, sacroiliitis, sprain of the sacrum, and disorders of the sacrum were related to her March 2, 2010 work injury.

Although Dr. Chavda indicated in his August 21, 2013 addendum report that these conditions should be accepted as related to the March 2, 2010 work injury, his opinion is of limited probative value because he did not provide any medical rationale in support of this opinion.[8] He did not provide any explanation as to why these conditions were work related. Dr. Chavda did not discuss the March 2, 2010 vehicular accident in any great detail or explain how it could have been competent to cause these conditions. Such medical rationale is especially necessary in the present case because a number of these medical conditions were not diagnosed until a significant amount of time had passed since the March 2, 2010 vehicular accident. Dr. Chavda first examined appellant more than three years after the March 2, 2010 accident and his August 12 and 21, 2013 reports lack rationale, as he did not explain why these additional medical conditions were not due to some nonwork-related cause, such as natural age-related progression.

On appeal, counsel argued that OWCP wrongly denied appellant's claim for additional accepted work conditions by impermissibly finding that the weight of the medical evidence rested with the medical adviser, Dr. Blum. He cited OWCP precedent which discussed the role of OWCP medical advisers in evaluating medical evidence, including the limits of that role.[9] The Board notes that counsel's argument in this regard is misplaced because appellant's claim was not denied on the basis that the weight of the medical evidence rested with Dr. Blum, but rather on the basis that she had not submitted sufficient rationalized medical evidence showing that the claimed additional medical conditions were related to her March 2, 2010 work injury.

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 medical conditions should be accepted as related to her March 2, 2010 work injury in addition to those already accepted.

[8] *See supra* note 6.

[9] *See supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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