



break room floor. She stated that she kept from falling by grabbing onto nearby chairs. Appellant stated that she injured her head, shoulder, arm, knee and leg. She stopped work on February 25, 2013. Appellant's supervisor stated that she spoke to appellant around 9:00 a.m. on February 22, 2013. Appellant related that she had taken a pain pill before the incident and wanted the effects of the pain pill to wear off to see if she was in pain from the slip.

In a March 8, 2013 letter, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a reasoned physician's opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted reports from Gladys Ellis, a nurse practitioner, dated February 25, March 4 and 18 and April 3, 2013. Ms. Ellis treated appellant for arm, shoulder, neck, and leg pain after she slipped on water at work. Appellant's history was significant for degenerative disc disease of the cervical and lumbar spine, meniscus tear of the right knee in 2007, and bulging discs in the cervical, and lumbar spine after a 2007 motor vehicle accident. Ms. Ellis noted findings of tenderness in the neck, back, right shoulder, right buttock, and right knee. She diagnosed lumbosacral joint sprain/strain, muscle spasms, cervical sprain/strain, cervicgia, hip sprain/strain, cervical, and lumbar spondylosis with myelopathy and cervical radiculitis. Ms. Ellis opined that appellant's slip at work "most likely" exacerbated her preexisting conditions. She noted that appellant was disabled for three days and then could return to part-time light duty. In state workers' compensation reports dated February 25, March 4, and April 3, 2013, Ms. Ellis noted treating appellant for a work-related accident noting appellant slipped on water at work and injured her right side. She diagnosed lumbar and cervical sprain/strain, hip sprain/strain, and cervicgia and referred her for physical therapy. In an attending physician's report dated February 25, 2013, Ms. Ellis noted appellant slipped on water at work but did not fall, injuring her arm, shoulder, neck, leg, toe, and side. She checked a box "yes" that appellant's condition was caused or aggravated by her work and found appellant totally disabled for three days. A February 25, 2013 right hip x-ray revealed no abnormalities. A right knee x-ray revealed loose bodies in the suprapatellar bursa, possible synovial osteochondromatosis, while a right shoulder x-ray showed diffuse degenerative changes. An x-ray of the cervical spine revealed cervical levoscoliosis and upper thoracic dextroscoliosis with reversal of the cervical lordosis, narrowing of C5-6, C6-7 disc spaces, diffuse spondylosis in the cervical region. A lumbar spine x-ray showed dextroscoliosis in the mid lumbar region and narrowing at L1-2, L2-3, L3-4, and L4-5 with vacuum phenomenon at L4-5 and lower lumbar facet arthropathy.

Appellant submitted a state workers' compensation report dated March 18, 2013 from Dr. Maureen Zelinka, a Board-certified family practitioner, who noted no change in appellant's condition since her March 4, 2013 appointment. She could work part time with restrictions. In a March 18, 2013 attending physician's report, Dr. Zelinka checked a box "yes" that appellant's condition was caused or aggravated by work activity. She found appellant partially disabled from February 25 to March 18, 2013, but appellant could work light duty four hours a day. In an April 4, 2013 attending physician's report, Dr. Zelinka stated the history of injury as a "slip and fall" on water at work and that she had a preexisting cervical and lumbar disease. She checked a box "yes" that appellant's condition was aggravated by work activity, noting "disc disease motor vehicle accident 2007." Dr. Zelinka found that appellant's condition had declined since working light duty. She recommended physical therapy.

In a questionnaire dated March 19, 2013, appellant noted taking pain medication prior to the work incident, but she indicated that the medication did not impair her vision, balance or motor skills. She noted that she did not fall to the ground but slipped on the water on the floor and fell forward landing on a chair seat holding a chair back. After her fall, appellant did not perceive any new pain and continued to work. She subsequently experienced headaches, arm, shoulder, low back, leg, and knee pain. Appellant reported having work-related carpal tunnel syndrome and bulging neck and back disc damage in 2001. She also noted a 2007 right knee replacement after a 2007 motor vehicle accident. Appellant submitted witness statements from Linda Lent, Joseph Hammes and Angela Bennett, coworkers, who saw a puddle of water in the break room and chairs blocking the area around the water. She reported to them that she slipped on the water.

In an April 16, 2013 decision, OWCP denied the claim as appellant had not submitted medical evidence establishing a medical condition in connection with the claimed event or work factors.

On May 14, 2013 appellant requested an oral hearing which was held on October 7, 2013. She resubmitted evidence previously of record. Appellant also resubmitted reports from Ms. Ellis dated February 25, March 4 and 18, and April 3, 2013 and the attending physician's report dated February 25, 2013 which had now been countersigned by Dr. Zelinka. She resubmitted the state workers' compensation reports dated February 25, March 4, and 18, 2013 also now countersigned by Dr. Zelinka. A duty status report from Dr. Zelinka dated April 3, 2013, indicated that appellant, sustained a cervical and lumbar sprain/strain, and was disabled from work. A September 26, 2013 cervical spine magnetic resonance imaging (MRI) scan revealed C4-5 bulging disc; C5-6 bulging disc with spinal stenosis and canal narrowing; C6-7 central disc herniation, narrowing of disc space with degenerative changes; and reversal of normal cervical spine curvature.

In an October 10, 2013 report, Dr. Charles M. Bolno, a Board-certified orthopedic surgeon, noted that appellant had a 2001 work injury to her lumbar and cervical spine causing neural foraminal encroachment at C5-6 and bulging disc at C6-7 with S1 radiculopathy and he opined, within a reasonable degree of medical certainty that her recent injury on February 22, 2013 directly aggravated her previous injuries. Dr. Bolno stated that appellant was totally disabled since March 29, 2013.

In a November 5, 2013 supplemental report, Dr. Bolno advised that, as a result of the October 17, 2001 work injury, based on MRI scan and electromyogram (EMG), appellant was diagnosed with S1 nerve root irritation and lumbar bulging disc at C5-6, nerve root irritation, and cervical bulging disc. He noted that a 2007 motor vehicle accident aggravated the cervical and lumbosacral spondylosis. Dr. Bolno indicated that x-rays taken after the February 22, 2013 incident showed narrowing at C5, C6, and C7, fused spondylosis and C6-7 disc herniations and dextroscoliosis with narrowing at L1-5. He stated that these were distinct differences in appellant's condition after the February 22, 2013 injury. Dr. Bolno also stated that recent lumbar spine x-rays showed dextroscoliosis with narrowing at L1-5 that was not present before February 22, 2013 while the lumbar radicular symptoms were previously only on the left side but were not bilateral. He opined that appellant had a permanent aggravation of degenerative disc

disease of the cervical and lumbar spine, C6-7 disc herniation, cervical and lumbar radiculopathy which was caused by twisting, and sudden movement when slipping on wet floor.

In a decision dated December 9, 2013, an OWCP hearing representative affirmed the April 16, 2013 decision.

On April 18, 2014 appellant requested reconsideration. She submitted a February 20, 2014 report from Dr. Zelinka who noted that prior to the February 22, 2013 injury appellant had degenerative disc disease of the cervical and lumbar spine and C6-7 disc herniation. Appellant stated that studies after the February 22, 2013 injury revealed additional damage including narrowing at C5, C6, and C7 with spondylosis, and a C6-7 disc herniation, dextroscoliosis with narrowing at L1-5 with bilateral radiculopathy. Dr. Zelinka opined that the post February 22, 2013 diagnoses represented the permanent aggravation of degenerative disc disease of the cervical lumbar spine and C6-7 disc herniations, and cervical and lumbar radiculopathy. He opined that these aggravations of the degeneration of the cervical and lumbar spine were caused by the slipping move as described by appellant. Dr. Zelinka noted that her opinions were to a reasonable degree of medical probability.

In a decision dated May 15, 2014, OWCP denied modification of the December 9, 2013 decision.

### **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 is 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.<sup>2</sup>

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 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.<sup>3</sup>

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

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>3</sup> *T.H.*, 59 ECAB 388 (2008).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

### ANALYSIS

It is not disputed that on February 22, 2013, appellant slipped on water on the break room floor at work and caught herself from falling by grabbing onto chairs. However, she has not submitted sufficient medical evidence to establish that her diagnosed conditions were caused or aggravated by the February 22, 2013 incident.

Appellant submitted an October 10, 2013 report from Dr. Bolno, a Board-certified orthopedic surgeon, who noted that she sustained injuries to her neck and back on February 22, 2013 which totally disabled her. In his narrative report, Dr. Bolno noted that she had acute lumbar and cervical radiculopathy in 2001 to 2002 and that her February 22, 2013 injury directly aggravated her previous injuries. He opined to a reasonable degree of medical certainty appellant's work injuries in February 2013 were directly related to her work-related slip on a wet floor which aggravated her preexisting work-related injuries causing acute cervical and lumbar radiculopathy with acute cervical and lumbar spine sprain and strain. Dr. Bolno advised that she was totally disabled since March 29, 2013. Similarly, on November 5, 2013, he indicated that, as a result of the October 17, 2001 work injury, based on MRI scan and EMG study, appellant was diagnosed with S1 nerve root irritation and lumbar bulging disc at C5-6, nerve root irritation and cervical bulging disc. Dr. Bolno noted distinct differences in her cervical and lumbar condition after the February 22, 2013 injury and opined that appellant had a permanent aggravation of degenerative disc disease of the cervical and lumbar spine, C6-7 disc herniation, cervical and lumbar radiculopathy caused by twisting and sudden movement when slipping on wet floor.

Although he supported causal relationship, Dr. Bolno did not provide sufficient medical rationale explaining the basis of his conclusion/opinion regarding the causal relationship between appellant's diagnosed conditions and the workplace fall. He did not explain how slipping on water would cause or aggravate the diagnosed conditions and why the cervical and lumbar disc disease and permanent aggravation of degenerative disc disease of the cervical and lumbar spine, C6-7 disc herniation, cervical and lumbar radiculopathy was not caused by nonwork-related factors such as age-related degenerative changes. Merely, noting that x-rays taken after the February 23, 2013 incident showed worsening degenerative spine conditions is insufficient to establish that the worsening is due to the work incident.<sup>5</sup> The need for more rationale is particularly important as appellant also had a 2007 motor vehicle accident in addition to her preexisting degenerative spine conditions. Therefore, this evidence is insufficient to meet her burden of proof.

Also submitted was a February 20, 2014 report from Dr. Zelinka, who noted appellant's history of a prior work injury in October 2001 and a motor vehicle accident in 2007 causing degenerative disc disease of the cervical and lumbar spine, and C6-7 disc herniation. Dr. Zelinka

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<sup>4</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> See *L.D.*, Docket No. 09-1503 (issued April 15, 2010) (the fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two).

stated that studies after the February 22, 2013 injury revealed additional damage including narrowing at C5, C6, C7 with spondylosis and a C6-7 disc herniation, dextroscoliosis with narrowing at L1-5 with bilateral radiculopathy. She opined that the post February 22, 2013 diagnoses represented the permanent aggravation of degenerative disc disease of the cervical lumbar spine and C6-7 disc herniations, and cervical and lumbar radiculopathy. Dr. Zelinka opined to a reasonable degree of medical probability that these aggravations of the degeneration of the cervical and lumbar spine were caused by the slipping move as described by appellant. Although Dr. Zelinka supported causal relationship in a conclusory statement, she did not provide medical rationale explaining the basis of her conclusion/opinion regarding the causal relationship between appellant's diagnosed conditions and the workplace incident. Dr. Zelinka did not explain how slipping on water would cause or aggravate the diagnosed conditions and why the cervical and lumbar disc pathology and radiculopathy was not caused by the October 2001 work injury, the 2007 motor vehicle accident or age-related degenerative changes. The need for rationale is particularly important where appellant has preexisting degenerative disc disease of the lumbar and cervical spine, a prior work injury in October 2001 and a motor vehicle accident in 2007 in which she sustained lumbar and cervical injuries. Therefore, this evidence is insufficient to meet appellant's burden of proof.

Dr. Zelinka also countersigned February 25, March 4 and 18, and April 3, 2013 reports which noted that appellant's fall at work "most likely" exacerbated her injuries. While these reports provide some speculative support for causal relationship,<sup>6</sup> they are insufficient to establish that the diagnosed conditions are causally related to her employment duties. Dr. Zelinka provided no medical reasoning to support her opinion on causal relationship. In state workers' compensation reports dated February 25 and March 4, 2013, she noted treating appellant for injuries after she slipped on water at work. Dr. Zelinka offered diagnoses and indicated that preexisting conditions contributed to appellant's current conditions. These reports are also insufficient to establish the claim as she did not provide medical rationale explaining how the employment incident caused or aggravated the diagnosed conditions.<sup>7</sup> Appellant submitted April 4, March 18, and February 25, 2013 attending physician's reports signed by Dr. Zelinka in which a box was checked "yes" to indicate that appellant's diagnosed condition was caused or aggravated by work activity. However, the Board has held that an opinion on causal relationship which consists only of a 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.<sup>8</sup> In none of these reports did Dr. Zelinka explain the process by which the February 22, 2013 slipping incident would cause or aggravate the diagnosed conditions. Therefore, these reports are insufficient to meet appellant's burden of proof.

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<sup>6</sup> Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

<sup>7</sup> See *T.M.*, 60 ECAB Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>8</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

With regard to nurse practitioner reports that were not signed by a physician, the Board has held that documents signed by a nurse are not considered medical evidence as a nurse is not a physician under FECA.<sup>9</sup> Thus, these treatment records are of no probative medical value in establishing appellant's claim. The remainder of the medical evidence, including reports of diagnostic testing, is insufficient to establish the claim as it does not support that the February 22, 2013 work incident caused or aggravated a diagnosed medical condition.<sup>10</sup>

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.<sup>11</sup> Appellant failed to submit such evidence, and OWCP therefore properly denied her claim for compensation.

On appeal, appellant through counsel, disagrees with OWCP's decision denying her claim for compensation and noted that she submitted sufficient evidence to establish her claim. As noted above, the medical evidence does not establish that her diagnosed conditions were causally related to her employment. Reports from appellant's physicians failed to provide sufficient medical rationale explaining the reasons why appellant's diagnosed medical conditions were caused or aggravated by particular employment duties.

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.

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<sup>9</sup> 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).

<sup>10</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>11</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 15, 2014 decision of the Office of Workers' Compensation Program is affirmed.

Issued: February 24, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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