

**United States Department of Labor
Employees' Compensation Appeals Board**

D.A., Appellant

and

**DEPARTMENT OF THE ARMY, REDSTONE
ARSENAL, AL, Employer**

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**Docket No. 15-19
Issued: February 26, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 2, 2014 appellant filed a timely appeal from an August 26, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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.

FACTUAL HISTORY

On March 20, 2013 appellant, then a 52-year-old budget analysis, filed a traumatic injury claim alleging that on March 7, 2013 she reached for a file above her head she felt pain in her neck and tingling in her shoulder that radiated down her arm.

¹ 5 U.S.C. § 8101 *et seq.*

In a March 13, 2013 report, Dr. Curt Freudenberger, a Board-certified orthopedic surgeon, advised that appellant was post anterior cervical discectomy and fusion (ACDF), performed on July 17, 2012, and that she may have reinjured her neck a week or so earlier. He noted that she was experiencing pain that radiated down her right arm with tingling in her ring and small finger. Dr. Freudenberger advised that x-rays showed a C4-6 ACDF with hardware intact, increased bridging fusion, and bone-on-bone involvement at C6-7 with principal right moderate neural foraminal stenosis. He recommended an epidural steroid injection. In a March 13, 2013 disability status report, Dr. Freudenberger advised that appellant was unable to return to work until March 28, 2013 and that upon her return she could only perform sedentary work. He responded “yes” as to whether her condition was work related.

Dr. Michael Cosgrove, Board-certified in anesthesiology and pain medicine, in a March 15, 2013 report, advised that appellant was scheduled to undergo an epidural block when OWCP’s authorization was received. He diagnosed neck/cervical pain and cervical spondylosis.

On examination, Dr. Freudenberger noted in his March 27, 2013 report that bilateral upper extremities were distally intact and that appellant had a positive Spurling’s test with C6 versus C7 nerve root distribution.

A March 8, 2013 disability status report from a nurse practitioner at the health unit advised that appellant had neck pain running down her right leg and arm. The nurse practitioner advised that appellant had a history of degenerative disc disease and that she was unable to work until she could be seen by a specialist. A March 11, 2013 treatment record from a nurse indicated that Dr. Freudenberger performed a cervical fusion in July 2012 and that appellant had a reinjury to the neck in October 2012 and again on March 7, 2013. Also submitted was an October 10, 2012 health unit record stating that appellant strained her right shoulder and neck while filing on October 9, 2012.

OWCP informed appellant that it had initially paid a limited amount of medical expenses without considering the merits of the claim, as it appeared that the injury was minor with minimal or no lost time from work. However, it would now consider the merits of her claim as she had requested additional medical treatment. OWCP advised appellant of the type of evidence needed to establish her claim.

Appellant provided a March 27, 2013 disability status report from Dr. Freudenberger who advised that appellant’s return to work could not be determined until the results following cervical injection were evaluated. Dr. Freudenberger diagnosed neck pain and cervical spondylosis and stated “yes” as to whether her condition was work related.

In a May 10, 2013 statement, appellant advised that on March 7, 2013 she was reaching for a thick file above her head when she felt sharp neck pain and lost feeling in her hand.

By decision dated May 29, 2013, OWCP denied appellant’s claim because the medical evidence was insufficient to establish that the diagnosed condition was causally related to the work incident.

In a June 3, 2013 report, a physician assistant advised that appellant underwent a C4 to C6 ACDF on July 7, 2012 and was now experiencing pain in the left C7-8 distribution. He stated that recently his office had tried to get a cervical epidural steroid injection approved “through workman’s comp[ensation]” but this was not found to be warranted. The physician

assistant noted findings and diagnosed left ulnar neuropathy and cervicalgia. In an attached June 3, 2013 note, Dr. Freudenberger stated that he agreed with the report of his physician assistant. He indicated that appellant was doing quite well with regard to her neck although there were some concerns about her left arm symptoms.

On May 22, 2014 appellant requested reconsideration. She stated that she was led to believe that Dr. Freudenberger had submitted the required documents. Appellant noted submitting documents “that prove that the previous surgery was not involved with my on[-]the[-] job injury.” She asserted that a magnetic resonance imaging (MRI) scan showed a C7 extrusion that happened when she lifted heavy files above her head. Appellant stated that the denial of treatment caused her pain and suffering and was a factor in her early retirement. Accompanying her request, she submitted a May 28, 2013 cervical spine MRI scan report from Dr. Timothy Baker, a Board-certified diagnostic radiologist, who advised that imaging revealed no acute bony injury, no significant spondylolisthesis, anterior fusion from C4-6, and well-maintained intervertebral disc spaces. There was a mild broad-based extrusion at C6-7 but no nerve root compression. Dr. Baker advised that appellant had postsurgical and degenerative changes and no definite nerve root compression or spinal stenosis at any level. Appellant also submitted medical reports previously of record.

Be decision dated August 26, 2014, OWCP denied modification of its May 29, 2013 decision, finding that medical evidence was insufficient to establish that her diagnosed condition was causally related to the work incident.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,² including that he or she is an “employee” within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.³ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.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 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

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ *R.C.*, 59 ECAB 427 (2008).

⁴ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *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.⁶

ANALYSIS

On March 7, 2013 appellant reached for a file above her head while at work. The evidence supports that the claimed work incident occurred. Therefore, the Board finds that the first component of fact of injury is established. However, the medical evidence is insufficient to establish that the work-related incident on March 7, 2013 caused appellant's diagnosed condition.

In his March 13 and 27, 2013 disability status reports, Dr. Freudenberger stated "yes" in regard to whether appellant's condition was work related. However, in neither report did Dr. Freudenberger explain how reaching for a file on March 7, 2013 caused or aggravated a diagnosed medical condition. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.⁷ In his March 13, 2013 treatment report, Dr. Freudenberger advised that appellant had a cervical discectomy and fusion on July 17, 2012, and that she may have reinjured her neck a week or so earlier. However, he did not reference the specifics of the March 7, 2013 work incident or otherwise support causal relationship. Likewise, Dr. Freudenberger's March 27, 2013 report noted appellant's status but did not specifically address causal relationship. The Board has held that medical opinions that do not state an opinion on causal relationship are of little probative value.⁸ In a June 3, 2013 report, Dr. Freudenberger indicated that his office had tried to get a cervical epidural steroid injection approved "through workman's comp[ensation]" but he did not otherwise address why appellant's condition was related to the March 7, 2013 work incident.

Other medical reports of record, such as Dr. Cosgrove's March 15, 2013 report and Dr. Baker's May 22, 2013 MRI scan report, are insufficient to discharge appellant's burden of proof because they do not address causal relationship between a diagnosed medical condition and the March 7, 2013 work incident.⁹

OWCP also received evidence from nurses or nurse practitioners at the employing establishment's health unit. However, these reports are not considered medical evidence as they are not considered physicians under FECA.¹⁰

Consequently, appellant has submitted insufficient medical evidence to establish her claim. As noted, she has not submitted reasoned medical evidence, based on an accurate factual background, explaining how the March 7, 2013 work incident caused or contributed to a diagnosed medical condition. The need for medical reasoning or rationale is particularly important where the record indicates that appellant had a serious previous condition to the same

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

⁷ *Brenda L. DuBuque*, 55 ECAB 212 (2004).

⁸ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁹ *See id.*

¹⁰ *Sean O'Connell*, 56 ECAB 195 (2004). *See* 5 U.S.C. § 8101(2).

area of the body. Because appellant has not provided such medical opinion evidence in this case, she has failed to meet her burden of proof.

On appeal, appellant asserts that the present matter should have been processed under a claim for an October 1990 injury to her neck or back. The Board notes, however, that the record reflects an intervening incident on March 7, 2013. As such it was properly handled as a new traumatic injury.¹¹

Appellant may submit new evidence or argument as part of a formal 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 she sustained a traumatic injury in the performance of duty on March 7, 2013.

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 26, 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

¹¹ See *Bryant F. Blackmon*, 56 ECAB 752 (2006).