

ISSUE

The issue is whether appellant met her burden of proof to establish cervical and lumbar injuries in the performance of duty on September 30, 2014.

FACTUAL HISTORY

On October 2, 2014 appellant, then a 56-year-old child development educational technician, filed a traumatic injury claim (Form CA-1) alleging that on September 30, 2014 she sustained a muscle strain of the right shoulder and lower back when she picked up a child for a fire drill to place her in an evacuation crib. She first sought medical treatment on October 2, 2014. In support of her claim, appellant submitted an official educational technician position description.

The employing establishment issued appellant a properly completed Form CA-16, authorization for examination, dated October 3, 2014, which indicated that she was authorized to seek medical treatment with Dr. Stephen Badolato, Board-certified in family practice, related to the September 30, 2014 injury. The description of injury was reported as sprain of right shoulder and lower back. On the reverse side of the Form CA-16, Dr. David Badolato, Board-certified in family medicine, reported that appellant was picking up a child during a fire drill and hurt her shoulder, neck, and lower back. Dr. David Badolato diagnosed neck sprain and lower back sprain and checked the box marked "Yes" when asked if the condition was caused or aggravated by the employment activity described.

In support of her claim, appellant submitted treatment notes and duty status reports (Form CA-17) dated October 3 to November 5, 2014 from Dr. Stephen Badolato in which he reported that on September 30, 2014 appellant was attempting to pull up a child during a fire drill and experienced pain in her neck, right arm, right shoulder, and lower back. Dr. Stephen Badolato diagnosed cervical and lumbar strain and also noted mild-to-moderate degenerative disc disease (DDD). He recommended a magnetic resonance imaging (MRI) scan of the cervical and lumbar spine due to possible herniated nucleus pulposus (HNP) and restricted appellant from returning to work.

In a November 7, 2014 diagnostic report, Dr. Mark Preston, a Board-certified diagnostic radiologist, reported that an MRI scan of the cervical spine revealed C3-4 moderate central HNP, C4-5 small central HNP, mild disc bulging at C5-7, and multilevel DDD, central stenosis, and neural foraminal encroachment.

In a November 12, 2014 treatment note, Dr. Stephen Badolato diagnosed cervical spine HNP and lumbar spine HNP based on review of diagnostic studies. On a separate discharge instructions form, he checked the box marked "Yes" when asked if appellant was treated for a work-related injury, noting the date of injury as September 30, 2014. Dr. Badolato further restricted appellant from returning to work.

By letter dated December 10, 2014, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In a December 20, 2014 narrative statement, appellant responded to OWCP's questionnaire stating that she had no prior disability or symptoms before her work-related injury. She reported pain in her lower back and right shoulder when picking up the child which progressively worsened, causing her to seek medical treatment with her attending physician. Appellant further stated that her physician had sent the proper medical reports to OWCP in support of her claim.

In support of her claim, appellant submitted a November 7, 2014 diagnostic report from Dr. Preston who provided MRI scan findings pertaining to the lumbosacral spine. Dr. Preston noted moderate central/left paracentral HNP at L3-4, small left intraforaminal HNP at L2-3, moderate disc bulge at L4-5 and L2-3, and multilevel DDD, central stenosis, facet arthropathy, and neural foraminal encroachment.

In treatment notes dated December 18, 2014, Dr. Stephen Badolato diagnosed work-related HNP of the cervical and lumbar spine and restricted appellant from returning to work. CA-17 forms were also provided dated December 18, 2014 and January 12, 2015 restricting appellant from returning to work.

By decision dated January 13, 2015, OWCP denied appellant's claim finding that the evidence of record failed to establish that her diagnosed conditions were causally related to the accepted September 30, 2014 employment incident.

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, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.³ 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.⁴

In order to determine whether an employee actually sustained a traumatic injury, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Elaine Pendleton*, *supra* note 3.

medical opinion evidence supporting such a causal relationship.⁶ 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

OWCP accepted that the September 30, 2014 employment incident occurred as alleged. The issue is whether appellant established that the incident caused her lumbar and cervical injury. The Board finds that she has failed to submit sufficient medical evidence that her lumbar and cervical conditions are causally related to the September 30, 2014 employment incident.⁸

In treatment notes and CA-17 forms dated October 3, 2014 through January 7, 2015, Dr. Stephen Badolato reported that on September 30, 2014 appellant attempted to pull up a child during a fire drill and experienced pain in her neck, right arm, right shoulder, and lower back. He diagnosed cervical and lumbar strain, degenerative disc disease and herniated discs of the cervical and lumbar spine. On a separate discharge instruction form, Dr. Badolato checked the box marked "Yes" to indicate his opinion that appellant was treated for a work-related injury. While he checked the box marked "Yes," the Board has held that a report that offers only a checkmark to settle the issue of causal relationship is of diminished probative value and is insufficient to establish causal relationship.⁹ Dr. Badolato did not explain the mechanism of injury by detailing how lifting a child could have caused appellant's injury. Moreover, the diagnostic studies revealed degenerative conditions which he did not discuss. Of importance is a rationalized opinion on how any preexisting condition progressed beyond what might otherwise, have been expected from the natural progression of that condition.¹⁰ The Board has held that medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹¹

The opinion of a physician supporting causal relationship must rest on complete factual and medical background. The opinion must also be supported by affirmative evidence, address

⁶ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ See *Robert Broome*, 55 ECAB 339 (2004).

⁹ See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

¹⁰ *R.E.*, Docket No. 14-868 (issued September 24, 2014).

¹¹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

the specific evidence of record, and provide a medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹²

Dr. Preston's reports are also insufficient because he provided only diagnostic findings pertaining to the MRI scan of the cervical and lumbar spine. He failed to offer a firm medical diagnosis and did not discuss appellant's employment and medical history. The report offered no opinion regarding the cause of her conditions. The Board has held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹³

The Board notes that Dr. Badolato's October 3, 2013 attending physician's report is insufficient because the only opinion provided on causal relationship is a checkmark. A report that addresses causal relationship with a checkmark is of diminished probative value and insufficient to establish causal relationship.¹⁴

On appeal, appellant argues that her physician submitted a letter discussing her condition but refused to write another report. The Board also notes that appellant submitted additional evidence after OWCP decision. The Board is precluded from considering evidence which was not before OWCP at the time of its final decision.¹⁵

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

The Board also notes that the employing establishment issued a Form CA-16 on October 3, 2014 authorizing medical treatment with Dr. Badolato.¹⁶ The Board has held that when the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury. The Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.¹⁷ Although OWCP denied appellant's claim for an injury, it did not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, OWCP should further address this issue.¹⁸

¹² See *Lee R. Haywood*, 48 ECAB 145 (1996).

¹³ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹⁴ *Supra* note 9.

¹⁵ 20 C.F.R. § 501.2(c).

¹⁶ *Id.* at § 10.300 provides that, when an employee sustains a work-related traumatic injury requiring medical treatment, the employing establishment should issue a CA-16 form.

¹⁷ See 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

¹⁸ See *P.B.*, Docket No. 14-837 (issued August 12, 2014).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her cervical and lumbar conditions are causally related to the September 30, 2014 employment incident, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated January 13, 2015 is affirmed.

Issued: June 22, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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