

FACTUAL HISTORY

This case has previously been before the Board. On February 25, 2012 appellant, then a 52-year-old clerk, filed a traumatic injury claim alleging that on February 21, 2012 she sustained a severe pinched nerve in her neck, right shoulder, and arm when she brought in a skid of circulars/advertisements. On September 20, 2013 the Board affirmed a September 26, 2012 OWCP decision, which denied modification of OWCP's April 13, 2012 decision denying her traumatic injury claim.² The Board found that the medical opinion evidence submitted by appellant was insufficient to establish her claim that she sustained neck, right shoulder, and arm conditions related to the accepted February 21, 2012 employment incident. The facts and conclusions of the Board's prior decisions are incorporated herein by reference.

Following OWCP's September 26, 2012 decision, OWCP received additional medical evidence. In an October 10, 2012 report, Dr. Eric A. Williams, an examining Board-certified orthopedic surgeon, stated that appellant was seen for a follow-up visit for her right shoulder and cervical spine conditions. Physical examination findings were provided and he stated that her cervical spine had been maximized with surgery. Dr. Williams concluded that appellant's job requirements were not such that he would clear her to return to work at this time.

In a January 30, 2013 report, Dr. Norman B. Stempler, an osteopath specializing in orthopedic surgery, conducted a physical examination, reviewed appellant's medical records, and diagnosed ongoing cervical musculoligamentous injury, severe herniated cervical disc resulting in anterior cervical fusion, and chronic ongoing musculoligamentous cervical spine injury with intermittent right cervical radiculopathy. He reported that, on February 21, 2012, she sustained an injury due to pulling multiple skids that were estimated to weigh over 200 pounds per skid with no electric truck or assistance. Appellant reported that she had a history of shoulder stiffness, but denied any cervical spine history or other significant medical history. She also related that "she only has 75 percent use of that shoulder as far back as she could remember as a teenager." A physical examination revealed increased right trapezial spasm, suboccipital pain, paracervical pain, and trapezial pain. Range of motion findings included up to 30 degrees flexion and extension beyond neutral and pain and difficulty with bilateral rotating beyond 15 degrees. Dr. Stempler noted that appellant had preexisting cervical disease, but opined that the C5-6 large disc extrusion was due to the February 21, 2012 incident. He noted that, prior to the February 21, 2012 work incident, she had no problems bending, moving heavy mail pallets, or lifting heavy trays and that injury resulted in a cervical fusion. Dr. Stempler opined that the February 21, 2012 work incident aggravated her chronic cervical condition and that there is a direct relationship between the work incident and her complaints and cervical surgery.

In a November 7, 2012 office note, Dr. Minn H. Saing, a Board-certified orthopedic surgeon, diagnosed chronic right shoulder adhesive capsulitis.

In a February 18, 2013 progress note, Dr. Stempler reviewed a magnetic resonance imaging (MRI) scan, which showed preexisting multiple levels of disease, but attributed the large disc extrusion at C5-6 to the February 21, 2012 work incident. He reiterated his opinion

² Docket No. 13-930 (issued September 20, 2013).

that appellant's cervical condition was preexisting and had been aggravated by the February 21, 2012 work incident.

In form reports dated July 26 and September 13, 2012 and June 26, 2013 Dr. David Van Why, a Board-certified physiatrist, provided physical examination findings and recommendations.

On March 17 and April 9, 2014 appellant's counsel requested reconsideration. In support of the request, counsel submitted medical evidence as set forth below including physical therapy notes for the period August 7 through October 9, 2013 by Dwendolyn Dillard, a physical therapist.

In form reports for the period April 3 through September 23, 2013, Dr. Van Why provided physical examination findings, recommendations, treatments provided, and an update on appellant's status.

In an October 9, 2013 discharge note, Dr. Van Why provided status of current problems, noted that appellant demonstrated impingement in walking, and instructed her to continue with her home exercise program.

By decision dated June 13, 2014, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵

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.⁶ 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.⁷ Second, the employee must

³ *Supra* note 1.

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

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.⁹ 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.¹⁰

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹¹ Rationalized medical 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 the compensable employment factors.¹² 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.¹³

ANALYSIS

OWCP accepted that February 21, 2012 incident occurred as alleged. However, it found that the evidence of record was insufficient to establish that appellant sustained any diagnosed medical condition as a result of her accepted February 21, 2012 employment incident. The issue on appeal is whether the medical evidence of record established that she sustained a diagnosed condition, causally related to the accepted February 21, 2012 employment incident. The Board finds that appellant failed to meet her burden of proof.

Subsequent to the initial denial of her claim, OWCP received reports from Drs. Stempler, Saing, Williams, and Van Why. As discussed and explained below none of these reports are sufficient to establish appellant's claim.

In a January 30, 2013 report, Dr. Stempler diagnosed ongoing cervical musculoligamentous injury, severe herniated cervical disc resulting in anterior cervical fusion,

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

⁹ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

¹⁰ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹¹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹² *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹³ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

and chronic ongoing musculoligamentous cervical spine injury with intermittent right cervical radiculopathy. He reported that, on February 21, 2012, appellant sustained an injury due to pulling multiple skids that were estimated to weigh over 200 pounds per skid with no electric truck or assistance. Based on appellant's description of how the injury occurred, her preexisting cervical disease and the lack of any prior problems, Dr. Stempler opined that there was a direct causal relationship between her cervical surgery, complaints, and the work incident. In a February 18, 2013 progress note, he note that an MRI scan showed preexisting multiple levels of disc disease, but he attributed the large disc extrusion at C5-6 to the February 21, 2012 incident.

However, although Dr. Stempler supported causal relationship, he did not provide sufficient medical rationale explaining the basis of his conclusion/opinion regarding the causal relationship between appellant's diagnosed conditions and bringing in a skid of circulars/advertisements. He did not explain how bringing in a skid of mail could cause or aggravate the diagnosed conditions. A mere conclusion without the necessary rationale explaining why the physician believes that a claimant's accepted exposure resulted in a diagnosed condition is not sufficient.¹⁴ Thus, Dr. Stempler's reports do not establish causal relationship.

In an October 10, 2012 report, Dr. Williams diagnosed right shoulder and cervical spine conditions. Dr. Saing, in a November 7, 2012 office note, diagnosed chronic right shoulder adhesive capsulitis. Dr. Van Why submitted form reports covering the period July 26, 2012 through September 23, 2013 providing physical findings, treatment provided, and updates on appellant's status. In an October 9, 2013 discharge note, he instructed appellant to continue with her home exercise program and noted that she demonstrated impingement in walking. None of these physicians offered any opinion as to the cause of the diagnosed conditions or any relationship between the accepted February 21, 2012 employment incident and appellant's claimed back and right shoulder conditions. 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.¹⁵ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹⁶ Therefore, medical reports by Drs. Saing, Williams, and Van Why are insufficient to meet appellant's burden of proof.

Appellant also submitted reports from Ms. Dillard, a physical therapist. However, records from a physical therapist do not constitute competent medical opinion in support of

¹⁴ See *S.S.*, 59 ECAB 315 Docket No. 07-579 (issued January 14, 2008) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof); *Beverly A. Spencer*, 55 ECAB 501 (2004) (a mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet the claimant's burden of proof).

¹⁵ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁶ See *Roy L. Humphrey*, 57 ECAB 238 (2005); *Lee R. Haywood*, 48 ECAB 145 (1996).

causal relationship. A physical therapist is not a physician as defined under FECA.¹⁷ Thus, records from Ms. Dillard are insufficient to establish the claim.¹⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions 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.¹⁹ Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence.

OWCP advised appellant to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment, and the physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how her claimed cervical and arm conditions were caused or aggravated by the February 21, 2012 employment incident, she has not met her burden of proof to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment.

On appeal, appellant's counsel contends that the medical evidence establishes appellant's claim. He argued that OWCP failed to consider a report by a treating physician, Dr. Jane Kong, a Board-certified family practitioner, which was based on a March 9, 2012 MRI scan and an April 19, 2012 operative report by Dr. Williams. These reports were considered by OWCP in its September 26, 2012 decision and by the Board in its September 30, 2013 decision. With respect to Dr. Stempler's January 30, 2013 report, OWCP found that, while he provided an opinion on causal relationship, he provided no supporting rationale. As explained above, medical opinions with no supporting rationale on causal relationship are insufficient to support appellant's burden of proof.

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 establish that she sustained neck, right shoulder, and arm conditions related to the accepted February 21, 2012 employment incident.

¹⁷ A.C., Docket No. 08-1453 (issued November 18, 2008). Under FECA, a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

¹⁸ *Allen C. Hundley*, 53 ECAB 551 (2002); *Lyle E. Dayberry*, 9 ECAB 369 (1998).

¹⁹ See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 39 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 13, 2014 is affirmed.

Issued: May 7, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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