

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

C.B., Appellant)

and)

DEPARTMENT OF DEFENSE, DEFENSE)
THREAT REDUCTION AGENCY,)
Fort Belvoir, VA, Employer)

Docket No. 15-1044
Issued: November 6, 2015

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 6, 2015 appellant filed a timely appeal from the February 2, 2015 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 the September 19, 2013 work incident caused the diagnosed condition of lumbar disc syndrome with radiculopathy.

FACTUAL HISTORY

On October 15, 2013 appellant, a 30-year-old an international relations specialist, filed a traumatic injury claim alleging that she injured her lower back on September 19, 2013 after

¹ 5 U.S.C. § 8101 *et seq.*

spending six hours going in and out of a marksman position (half squat with back bent and arms outstretched). Appellant explained in more detail:

“From approximately 0800-1400 on September 19, 2013 I went in and out of the marksman position, a half squatting position with back bent and arms outstretched. This position was demonstrated to me by the instructors at the weapons range and I was continuously advised to be in this position anytime I would fire the M9 during the training. After the training I drove home, which took about an hour. As I attempted to raise myself up from the sitting to standing position and exit the car, I felt a sharp pain in my lower back. It was then that I first realized I had been injured. I had never experienced such pain in my lower back in my life. I did a quick evaluation of what was different in my routine that day and quickly assessed that my injury must have been a result of the training I attended earlier that day.”

On October 9, 2013 Dr. Robert Knapp, a chiropractor, diagnosed lumbar spondylosis with myelopathy as well as thoracic, lumbar, and sacral nonallopathic lesions. On October 11, 2013 he advised that appellant was being seen because of subluxation problems she was having with her spine.

Dr. Brenda E. Mitchell, the primary care physician specializing in family medicine, noted that appellant was seen twice for low back pain after over six hours of practice on a gun range. Appellant’s symptoms included low back pain and stiffness limiting her ability to sit for prolonged periods. She noted that appellant had no history of back pain prior to practice on the gun range. “I would say with reasonable medical certainty that her condition is a result of the gun range practice for a prolonged period.”

In a decision dated November 29, 2013, OWCP denied appellant’s claim for compensation benefits. It accepted that the work incident occurred as alleged but found that the medical evidence was insufficient to establish a diagnosed medical condition causally related thereto.

Dr. Mitchell offered a supplemental report noting, “[Appellant] had back pain after spending over six hours on a gun range. She has no prior history of back pain. The time on the gun range in a crouched position is likely the cause of her back pain.”

Dr. Rida N. Azer, a Board-certified orthopedic surgeon, offered a treatment note. She described appellant’s complaints and findings on physical examination. X-rays showed straightening of the lumbar lordosis and some narrowing of the interspace between L5 and S1.

On February 10, 2014 Dr. Azer related that appellant strained her back in training when she was in a position of flexion of the hip and knees and with her hands forward. Appellant had low back pain radiating down to the left buttock and thigh. After describing her findings on physical examination, Dr. Azer diagnosed lumbar disc syndrome with radiculopathy, left L5-S1. She imposed work restrictions.

In a decision dated June 12, 2014, OWCP reviewed the merits of appellant's case and denied modification of its prior decision. It found that the record contained no rationalized medical evidence to establish the element of causal relationship.

On November 11, 2014 appellant filed for reconsideration. She advised Dr. Azer that OWCP was giving her problems regarding causation of the condition. On August 20, 2014 Dr. Azer opined that, "[Appellant] shows me photographs of the positions. [Her] condition in the lumbar spine region is caused, as mentioned in my report of February 10, 2014 from the position while training in defense with the hip and knees bent and also leaning forward. The patient's conditions, restrictions and limitations and treatment are caused by her work injury."

In a decision dated February 2, 2015, OWCP again reviewed the merits of appellant's claim and denied modification of its prior decision. It found that Dr. Azer failed to provide a rationalized medical discussion of how the work incident caused lumbar disc syndrome/disease with radiculopathy at the L5-S1 level.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. She must also establish that such event, incident, or exposure caused an injury.³

Causal relationship is a medical issue,⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ be one of reasonable medical certainty,⁶ and be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

² 5 U.S.C. § 8102(a).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

ANALYSIS

OWCP accepts that on September 19, 2013 appellant spent six hours going in and out of a marksman position (half squat with back bent and arms outstretched) during weapons qualification training at work. Appellant has therefore met her burden of proof to establish that she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. The question that remains is whether the September 19, 2013 work activity caused an injury, specifically, whether the activity caused the diagnosed lumbar disc syndrome with myelopathy at the L5-S1 level.

Dr. Knapp, the chiropractor, is not a qualified physician. Section 8101(2) of FECA⁸ provides that the term “physician,” as used therein, “includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary.”⁹ There is no indication that Dr. Knapp obtained an x-ray to demonstrate the existence of a specific subluxation of the spine. He is therefore not considered competent to render a medical opinion on the issue of causal relationship.¹⁰ Moreover, Dr. Knapp did not address the issue.

Dr. Mitchell, the specialist in family medicine, is a qualified physician, but she did not offer a firm diagnosis of appellant’s medical condition. She simply reported that appellant’s symptoms included low back pain and stiffness. She did not identify what pathology might be causing these symptoms. Thus, if OWCP were to accept appellant’s claim, it would not know on the basis of Dr. Mitchell’s reports what medical condition it should accept or what medical treatment or testing it should authorize.

Dr. Mitchell noted that appellant had no history of back pain prior to practice on the gun range. The Board has held that when a physician concludes that a condition is causally related to an employment because the employee was asymptomatic before the employment incident, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.¹¹ Thus, when Dr. Mitchell opined that appellant’s “condition” was a result of the gun range practice for a prolonged period, her opinion carries little weight as she did not explain how time on the gun range in a crouched position caused the unidentified medical condition.

Dr. Azer, a Board-certified orthopedic surgeon, is a qualified physician who offered a specific diagnosis of appellant’s low back condition of lumbar disc syndrome with radiculopathy, left L5-S1. She also offered an opinion on causal relationship. On August 20, 2014 having reviewed photographs of the firing position appellant assumed during her training on September 19, 2013, Dr. Azer found that appellant’s condition was caused by that position, with

⁸ 5 U.S.C. § 8101(2).

⁹ See 20 C.F.R. § 10.400(e) (defining reimbursable chiropractic services).

¹⁰ See generally *Theresa K. McKenna*, 30 ECAB 702 (1979).

¹¹ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

the hip and knees bent and also leaning forward. However, this is certainly supportive of appellant's claim. The issue with Dr. Azer's opinion, however, is that she did not explain from a pathophysiological or orthopedic perspective how being in a kneeling position for a prolonged time can herniate an intervertebral disc. Dr. Azer did not describe how this happened, nor did she address whether this was the first time appellant underwent such training or whether a herniated disc would be a common or expected result of such activity. Further, she did not account for the fact that appellant did not realize low back symptoms until she had driven home, which took approximately one hour, and tried to exit her car. When the training ended, however, appellant appeared unaware that anything was wrong. Dr. Azer ignored these issues and opined simply, as appellant had concluded for herself, that the position assumed during training caused the herniated disc. Medical conclusions unsupported by rationale are of little probative value.¹²

Although Dr. Azer's opinion is supportive of appellant's claim, it is not well rationalized or based on a complete factual history.¹³ Because this opinion has diminished probative value in establishing the critical element of causal relationship, the Board finds that appellant has not met her burden to establish that the September 19, 2013 work incident caused the diagnosed lumbar disc syndrome with radiculopathy, left L5-S1. Accordingly, the Board will affirm OWCP's February 2, 2015 decision.

CONCLUSION

The Board finds that appellant has not met her burden to establish that the September 19, 2013 work incident caused the diagnosed lumbar disc syndrome with radiculopathy, left L5-S1.

¹² *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

¹³ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

ORDER

IT IS HEREBY ORDERED THAT the February 2, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 2015
Washington, DC

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

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

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