

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances surrounding the prior appeal are incorporated by reference. The relevant facts are as follows. On October 16, 2012 appellant, then a 50-year-old segment information security officer, filed a traumatic injury claim (Form CA-1) alleging that on October 15, 2012 she experienced pain, numbness, and tingling in her left lower back, left hip, and left leg after standing up from her chair in the performance of duty.

OWCP denied appellant's claim for compensation on March 26, 2013 finding that the reports from her treating physician, Dr. Bradley A. Hiser, a neurosurgeon, were not based on an accurate medical history. It also noted that there were inconsistencies between appellant's description of how the injury occurred and other evidence of record.

Appellant requested reconsideration on November 21, 2013. On March 17, 2014 OWCP denied modification of the prior decision. It found that appellant's physician had not addressed the mechanism of injury, but had attributed causal relationship to the employment due to a "temporal association." Appellant again requested reconsideration on September 4, 2014. Counsel cited a report from Dr. Hiser, dated July 11, 2014, in support of the request for reconsideration. The July 11, 2014 report was not, however, of record. By decision dated December 18, 2014, OWCP again denied modification, finding that the July 11, 2014 report from Dr. Hiser was not of record. Appellant again requested reconsideration on December 23, 2014. A copy of the July 11, 2014 report from Dr. Hiser was submitted with this request for reconsideration. In a decision dated March 19, 2015, OWCP affirmed its prior decision, noting that appellant had not submitted sufficient medical evidence to establish a causal relationship between the employment event of October 15, 2012 and her back conditions. It noted that Dr. Hiser's July 11, 2014 report did not provide sufficient medical rationale.

On April 27, 2015 appellant appealed to the Board. In an August 7, 2015 decision, the Board remanded the case to OWCP for further development of the medical evidence, directing OWCP to forward the case record and a statement of accepted facts to an appropriate specialist for an evaluation and a rationalized medical opinion regarding appellant's condition and possible aggravation of a preexisting condition due to the employment incident of October 15, 2012. The Board found that Dr. Hiser's July 11, 2014 report, while not sufficient to discharge appellant's burden of proof, was sufficient to require further development. The Board's review of the previous medical evidence of record is *res judicata*.³

On August 13, 2015 OWCP forwarded the case record along with a statement of accepted facts to Dr. John J. Sand, a Board-certified neurologist, for evaluation of whether appellant's back condition was caused or aggravated by the work incident of October 15, 2012.

² Docket No. 15-1130 (issued August 7, 2015).

³ See *R.L.*, Docket No. 15-1010 (issued July 21, 2015). See also *A.P.*, Docket No. 14-1228 (issued October 15, 2014). As the Board has previously reviewed the evidence of record submitted prior to OWCP's April 8, 2013 decision, the issue of its weight is *res judicata* and not subject to further consideration by the Board.

In a second opinion report dated September 23, 2015, Dr. Sand examined appellant and opined that the etiology of appellant's back condition was multifactorial, but was primarily due to the patient's massive obesity. He noted that her other risk factors included a prior history of smoking, diabetes, and previous lumbosacral spine surgery in 2006. Dr. Sand noted that appellant's history of injury of getting up and down out of a sitting position and twisting in a chair may have contributed somewhat, but it would have been a relatively minor contribution caused by her own weight. He explained that there was "no clear clinical evidence that [appellant's] back position is caused by her work duties." In fact, appellant had a prior lumbar spine injury, and two lumbosacral surgical procedures in October and November 2012 that "had a large contribution" from her previous lumbosacral condition and surgery.

Dr. Sand opined that appellant's current condition was largely asymptomatic and was primarily caused by typical lumbosacral spine deterioration from weight, diabetes, and smoking along with morbid obesity causing increased stress on the spine. He related that she was capable of performing her date-of-injury position and did not require additional treatment. Finally, Dr. Sand noted that appellant should not perform repetitive spine movement including bending at the waist or twisting while standing, or doing any lifting or pushing over 15 pounds.

By decision dated September 29, 2015, OWCP reviewed the merits of appellant's claim and denied modification its prior decision of December 18, 2014. It reviewed the report of Dr. Sand, finding that he had opined that there was no clear clinical evidence that her back condition was caused by duties of her employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish 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.⁵ 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.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must initially be determined whether a fact of injury has been established.⁷ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁸

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

⁶ *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

⁷ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

⁸ *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

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.¹⁰ 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.¹¹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹² 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 compensable employment factors.¹³ 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.¹⁴

ANALYSIS

The Board finds that the medical evidence of record is insufficient to establish that the employment incident of October 15, 2012 caused or aggravated appellant's L3-4 disc herniation. The Board further finds that Dr. Sand's September 23, 2015 second opinion report represents the weight of medical evidence.

In his September 23, 2015 second opinion report, Dr. Sand noted that "[appellant] had a prior lumbar spine injury with etiology not elucidated and her job duties appear to be no more stressful than typical home activities," adding that "The current condition, now largely asymptomatic, was primarily caused by typical lumbosacral spine deterioration from weight, diabetes, and smoking along with morbid obesity causing increased stress on the spine." He emphasized that there was "no clear clinical evidence" that appellant's back condition was employment related. The Board finds that Dr. Sand's opinion is well reasoned and clearly states

⁹ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 5.

¹⁰ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

¹¹ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹² *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

¹³ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹⁴ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

that appellant's back conditions were not caused or aggravated by the incident of October 15, 2012.

On appeal counsel contends that Dr. Sand's statement that "While getting up and down out of a sitting position and twisting in a chair [...] may contribute somewhat, it is a relatively minor contribution [...]" establishes that the incident of October 15, 2012 aggravated her back conditions. The Board notes, however, that this statement must be read in the context of the remainder of Dr. Sand's report. Dr. Sand goes on to opine plainly that "There is no clear clinical evidence that [appellant's] back position is caused by her work duties." The bulk of Dr. Sand's report is devoted to explaining his opinion that appellant's back conditions were not caused or aggravated by the employment incident of October 15, 2012. As such, Dr. Sand's comment that the incident "may contribute somewhat" to her conditions does not overcome his statement that there is "no clear clinical evidence" that her conditions were caused by the incident of October 15, 2012.¹⁵

Counsel also contends that Dr. Sand's report creates a conflict in the medical evidence with Dr. Hiser. The Board notes that Dr. Hiser's July 11, 2014 report was already evaluated in the Board's prior decision of August 7, 2015. The Board found in this prior decision that the July 11, 2014 report was, while not completely rationalized; however, it was sufficient to warrant further development on the part of OWCP. Consequently, OWCP referred appellant to Dr. Sand whose report therefore represents the weight of medical evidence. As such there is no unresolved conflict of well-rationalized medical opinions.¹⁶

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 has not met her burden of proof to establish an injury causally related to an October 15, 2012 employment incident.

¹⁵ Medical opinions that a condition could be causally related to employment are speculative and therefore of diminished probative value. *See K.S.*, Docket No. 16-0035 (issued April 27, 2016).

¹⁶ It is well established that, where there exists opposing medical reports of virtually equal weight and rationale, the case should be referred to an impartial medical specialist for the purpose of resolving the conflict. *H.S.*, Docket No. 10-1220 (issued May 24, 2011).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 29, 2015 is affirmed.

Issued: June 20, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board