

FACTUAL HISTORY

On November 28, 2016 appellant, then a 21-year-old nurse, filed a traumatic injury claim (Form CA-1), alleging that, on November 21, 2016, she injured her low back when she reached over to pull a patient back into bed after he began to fall over the right side of the bed because the side rail was not secure. She stopped work on November 24, 2016. On the reverse side of the claim form, appellant's manager, T.D., checked a box marked "yes" to indicate that appellant was injured in the performance of duty. T.D., however, controverted continuation of pay, noting that there were different medical opinions about the injury.

Appellant submitted a return to work slip dated November 28, 2016 from an unidentified health care provider, who excused appellant from work on November 28 through December 5, 2016 for "medical reasons."

Appellant was treated by Dr. Peter C. Gerszten, a neurologist, on December 2, 2016, who recommended that she remain off work for two weeks so that he could monitor her symptoms. Dr. Gerszten requested that appellant be evaluated for physical capabilities, work restrictions, and possible return to work. He noted that appellant had a recent work injury and right-sided lumbar radiculopathy.

Dr. David A. Stone, a Board-certified physiatrist, noted seeing appellant on December 7, 2016 for back pain. He diagnosed stress fracture of the lumbar vertebra. Dr. Stone recommended a lumbosacral corset.

By letter dated December 12, 2016, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing the relationship between her claimed condition and the alleged November 21, 2016 employment incident. It also requested that appellant complete a development questionnaire regarding the factual elements of her claim within 30 days.

Appellant was treated by Dr. Hardy R. Bang, Board-certified in preventative medicine, on November 21, 2016 for low back pain. She reported that she relayed her lower back when she reached over to pull a patient back into bed as he began to fall over the right side as she bathed him. Appellant reported pain on the right side of the lower back and diffuse pain in her right leg. She reported a history of low back pain on the left side and surgery in 2011 and April 2016. Dr. Bang noted findings on examination of slightly antalgic gait, tenderness on palpation of the right lower back muscles, pain with flexion, negative straight leg raise bilaterally, reflexes were equal and positive bilaterally, intact strength, and intact sensation. He diagnosed lumbar strain with right leg pain. Dr. Bang recommended that appellant avoid heavy lifting, pushing, pulling, and bending. On November 23, 2016 he noted that appellant's back and leg pain improved, but she still had occasional right leg pain and discomfort in the lower back with bending. Findings included negative straight leg raises, mild tenderness of the right lower lumbar muscles, improved back range of motion, and intact strength. Dr. Bang diagnosed improving lumbar strain with right leg pain and recommended oral analgesics and moist heat. Appellant indicated that she was able to resume full duties so she was released to work without restrictions.

Appellant was treated by Dr. Thomas J. Stancik, Jr., an osteopath, on November 28, 2016 for low back pain. She reported injuring her back and being treated with oral analgesics and steroids which did not relieve her symptoms. Appellant noted symptoms of pain down the right leg, and right leg weakness. Dr. Stancik indicated that appellant had back surgery in the spring, relating to her diagnosed spina bifida, in which three rods were placed in her back. He noted findings of positive straight leg raises on the right, tenderness in the low back paraspinals, and decreased range of motion in all planes. Dr. Stancik diagnosed lumbar radiculopathy. He recommended pain medication and took appellant off work for one week.

A December 5, 2016 magnetic resonance imaging (MRI) scan of the lumbar spine revealed known low termination of the conus medullaris at L4-5, focal bone marrow edema in the right pedicle of L4, and possible stress response or bone contusion in this location.

Appellant was treated by Dr. Gerszten on December 16, 2016 for a stress fracture in her low back. Dr. Gerszten indicated that appellant had not recovered sufficiently to return to work and would be evaluated by a physiatrist.

Appellant submitted a December 21, 2016 report from Dr. Stone who treated her for back pain. Dr. Stone diagnosed bilateral lumbar radiculopathy, piriformis syndrome on the left side, lateral hip impingement syndrome, and prior L4 pedicle stress reaction. Appellant reported that the lumbar corset and medications initially seemed to reduce her symptoms, but she fell on her right side and had increase in pain, bilateral leg pain, and SI joint pain. Findings included pain on range of motion bilaterally, tenderness of the SI joints bilaterally, positive slump test bilaterally, generalized weakness of the hips, positive anterior impingement test bilaterally, and tenderness of the paraspinal muscles and the oblique's on the right. Dr. Stone noted that appellant was status post tethered cord surgery and bilateral SI joint fusion with persistent SI joint pain. He advised that she was presently unable to work and was starting physical therapy. In a referral for physical therapy dated December 21, 2016, Dr. Stone diagnosed bilateral lumbar radiculopathy, piriformis syndrome on the left side, bilateral SI joint fusion with persistent SI joint pain, L4 pedicle stress reaction, weak core with right hip internal rotator strain following contusion, and anterior hip impingement. He noted that appellant was status post tethered cord surgery and recommended physical therapy for six weeks.

By decision dated January 19, 2017, OWCP denied appellant's claim for compensation because the factual evidence of record did not support that the injury occurred as alleged. Therefore, fact of injury had not been established.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

³ *Supra* note 1.

employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.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 he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁵

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁶ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁷

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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

ANALYSIS

OWCP denied appellant's claim because she failed to establish that the claimed work incident occurred as alleged. The evidence of record supports that appellant's duties as a nurse involved direct patient care including bathing patients. There is no dispute that she was actually doing the job of a nurse on November 21, 2016. Specifically, appellant's supervisor, T.D., indicated on the Form CA-1 that appellant was in the performance of duty when the injury was alleged to have occurred. While T.D. also indicated that she disagreed with the facts involving the injury as alleged by appellant, she did not dispute the fact that appellant was performing her assigned work duties when the employment incident allegedly occurred.

⁴ *Gary J. Watling*, 52 ECAB 357 (2001).

⁵ *T.H.*, 59 ECAB 388 (2008).

⁶ *R.T.*, Docket No. 08-0408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

⁷ *Betty J. Smith*, 54 ECAB 174 (2002).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Additionally, the history of the work incident was confirmed by contemporaneous medical reports.⁹ Appellant sought medical treatment on November 21, 2016, the same day as the alleged work incident, and provided her medical care providers with a consistent history of injury. On November 21, 2016 she was treated by Dr. Bang for low back pain. Appellant reported that she injured her lower back when she reached over to pull a patient back into bed as he began to fall over the right side as she bathed him. The Board finds that it is undisputed that on November 21, 2016 appellant reached across a bed to pull a patient back into bed.¹⁰

As there is no dispute that appellant slipped and fell in the performance of her duties on July 5, 2016, the Board finds that the first component of fact of injury, the claimed incident, occurred as alleged. Given that she has established that the November 21, 2016 employment incident occurred as alleged, the question becomes whether this incident caused her an injury. As OWCP found that appellant did not establish fact of injury it did not analyze or develop the medical evidence. Thus, the Board will set aside OWCP's January 19, 2017 decision and remand the case for further action.¹¹ After such further development as is deemed necessary, OWCP shall issue a de novo final decision on appellant's traumatic injury claim.

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 met her burden of proof to establish a November 21, 2016 employment incident, as alleged. The case is remanded to determine whether appellant has an injury and disability causally related to the accepted November 21, 2016 employment incident.

⁹ See, e.g., *Cheryl R. Coleman*, Docket No. 94-1489 (issued Macy 11, 1996) (as contemporaneous medical evidence related ankle and knee complaints, OWCP accepted the claim for right ankle knee contusions).

¹⁰ See generally, *Conard Hightower*, 54 ECAB 796 (2003) (contemporaneous evidence is entitled to greater probative value than later evidence).

¹¹ See *C.M.*, Docket No. 17-0891 (issued October 20, 2017).

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: December 11, 2017
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