

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

S.M., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Salisbury, NC, Employer)

**Docket No. 16-1691
Issued: January 5, 2017**

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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On August 23, 2016 appellant filed a timely appeal from a May 23, 2016 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.²

ISSUE

The issue is whether appellant has established bilateral shoulder and upper back strains causally related to the May 4, 2016 work incident.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant also has another appeal, Docket No. 16-1692, involving a different OWCP claim that is before the Board. This other appeal is being adjudicated separately from the present matter.

FACTUAL HISTORY

On December 3, 2015 appellant, then a 44-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on November 19, 2015, she sustained upper back and bilateral shoulder strain/sprains while performing unspecified patient care. The employing establishment controverted the claim, contending that there were conflicting accounts of the claimed injury that cast doubt on its occurrence.

Appellant provided December 3 and 10, 2015 reports from the employing establishment's occupational health clinic, restricting her to lifting five pounds or less.

In a December 22, 2015 letter, OWCP advised appellant of the evidence needed to establish her claim, including factual evidence corroborating the December 19, 2015 incident occurred as alleged, and a report from her attending physician diagnosing an injury related to that incident. It afforded appellant 30 days to submit such evidence.

In response, appellant submitted a December 17, 2015 report from Dr. Harrison A. Latimer, an attending Board-certified orthopedic surgeon. Dr. Latimer related appellant's account of upper back and bilateral shoulder pain after performing a prolonged dressing change on a bedbound patient. He obtained x-rays showing degenerative disc disease at C5-6 and diagnosed an exacerbation of degenerative disc disease. Dr. Latimer opined that vigorous pushing motions during the dressing change aggravated appellant's preexisting cervical degenerative disc disease. He restricted appellant to lifting, pulling, pushing, and carrying five pounds or less.

On December 28, 2015 Dr. Latimer explained that appellant's symptoms were consistent with cervical radiculitis, and not with a muscular strain as appellant believed. He noted that appellant "clearly [did] not have a mechanism that explains a muscle strain that would cause the severity of her symptoms that do not allow her to raise her arms above 120 degrees four weeks after the inciting event." Dr. Latimer renewed the five-pound lifting restriction.

By decision dated January 28, 2016, OWCP denied appellant's claim, finding that appellant submitted insufficient factual evidence to corroborate that the November 19, 2015 incident occurred as alleged.

In a February 24, 2016 letter, appellant requested reconsideration. She explained that on November 19, 2015 she worked with a nursing assistant to reposition a 330-pound, bedbound patient to perform a dressing change. Appellant recalled that, while she was bracing the patient on his left side, he became resistant and began to push against her, causing a "pulling pain" in her shoulders. She provided a March 21, 2016 witness statement from the nursing assistant, corroborating her account of events. Appellant also submitted new medical evidence.

A February 4, 2016 cervical magnetic resonance imaging (MRI) scan showed a broad-based central to right paracentral disc protrusion, with slight pressure on the right side of the cord, and mild degenerative foraminal narrowing and moderate left foraminal stenosis.

In a February 23, 2016 report, Dr. Eugene A. Eline, an attending osteopath Board-certified in orthopedic surgery, provided a history of injury and treatment. On examination he

found mild tenderness to palpation in the cervical spine and trapezial regions bilaterally, mild restriction of cervical spine motion in all planes, positive Spurling's maneuver on the right, and signs of right shoulder impingement. Dr. Eline obtained x-rays showing left C5-6 foraminal narrowing. He diagnosed cervical radiculopathy, cervical stenosis, and right shoulder impingement. Dr. Eline opined on February 24, 2016 that appellant's symptoms were due to the herniated C5-6 disc. He found appellant's condition unchanged on April 3, 2016 examination.

By decision dated May 23, 2016, OWCP modified its January 28, 2016 decision to accept that the claimed incident occurred as alleged. However, it denied the claim, finding that the medical evidence of record did not contain sufficient rationale explaining how and why the accepted work incident would have caused the diagnosed injuries.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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.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 sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident that is alleged to have occurred.⁵ An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁶ 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.⁷

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

⁷ *Deborah L. Beatty*, 54 ECAB 340 (2003).

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

ANALYSIS

Appellant claimed that she sustained upper back and bilateral shoulder strains/sprains while performing patient care on November 19, 2015. OWCP denied the claim as the medical evidence of record was insufficient to establish causal relationship.

Dr. Latimer, an attending Board-certified orthopedic surgeon, opined on December 17, 2015 that vigorous pushing motions during the November 19, 2015 dressing change aggravated appellant's preexisting C5-6 cervical degenerative disc disease. He opined on December 28, 2015 that appellant's symptoms were consistent with cervical radiculitis. However, Dr. Latimer did not explain how and why appellant's upper extremity movements while caring for the patient would aggravate appellant's degenerative disc disease or cause cervical radiculitis. Similarly, Dr. Eline, an attending osteopathic physician Board-certified in orthopedic surgery, opined on February 23 and 24, 2016 that appellant had cervical radiculopathy due to a herniated C5-6 disc with stenosis, but did not explain how the November 19, 2015 workplace incident caused or could impact those conditions. In the absence of such rationale, the opinions of Dr. Latimer and Dr. Eline are of insufficient probative value to meet appellant's burden of proof.⁹

OWCP advised appellant by December 22, 2015 letter of the type of evidence needed to establish her claim, including her physician's rationalized opinion supporting causal relationship. As appellant failed to submit sufficient medical evidence explaining how and why the accepted incident would cause or aggravate the diagnosed conditions, OWCP properly denied the claim.¹⁰

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 established bilateral shoulder and upper back strains causally related to the November 19, 2015 work incident.

⁸ *Solomon Polen*, 51 ECAB 341 (2000).

⁹ *Supra* note 7.

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 23, 2016 is affirmed.

Issued: January 5, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board