United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 17-0488**
	)	**Issued: September 12, 2017**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Northport, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 3, 2017 appellant, through counsel, filed a timely appeal from November 3 and December 1, 2016 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether appellant met her burden of proof to expand the accepted conditions to include mild-to-moderate degenerative disc disease, degenerative changes of L5-S1 with mild facet arthrosis, cervical herniation, and lumbar sprain; and (2) whether appellant established that she was totally disabled, beginning December 13, 2015, due to the accepted December 10, 2015 employment injury.

On appeal counsel asserts that the medical evidence submitted supports that the employment injury caused additional medical conditions and supported entitlement to disability compensation.

FACTUAL HISTORY

On January 8, 2016 appellant, then a 59-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on December 10, 2015 she injured her head and back when she fell while assisting a patient. She stated that she "saw stars" and lost consciousness. The employing establishment reported that appellant furnished differing stories regarding the circumstances of the December 10, 2015 employment incident. Appellant stopped work on December 13, 2015 and did not return.

By letter dated January 28, 2016, OWCP informed appellant of the evidence needed to establish her claim and asked for additional information from appellant and the employing establishment.

On a December 10, 2015 report from the employing establishment health unit, Dr. Nicholas E. Sakellarios, an osteopath, provided a history that appellant reported that a patient pushed her and she fell backward landing on her upper back with minimal head contact with the floor and no loss of consciousness. Examination demonstrated no neurological deficits, no neck tenderness, and some back tenderness. Dr. Sakellarios advised that appellant could return to light duty. A cervical spine x-ray that day demonstrated no compression fracture or spondylolisthesis, and mild to moderate degenerative disc disease.

On January 11, 2016 Dr. Elizabeth A. Werns, Board-certified in family medicine who worked at the employing establishment, noted that appellant elected occupational health at the employing establishment for her workers' compensation injury of December 10, 2015. Appellant related a history of attempting to help a patient stand when he pushed her, causing her to fall, that she then hit her head on the wall and lost consciousness. She reported that she had seen her private physician on December 14, 2015 who ordered a cervical spine magnetic resonance imaging (MRI) scan. Dr. Werns reported that the scan showed straightening of cervical lordosis, no vertebral body compression fracture or aggressive marrow lesion, a normal spinal cord, unremarkable paraspinal soft tissues, and a congenital narrowing of the spinal canal. In the same report she advised that the scan also demonstrated C6-7 uncovertebral and facet hypertrophy that contributed to severe right and moderate left foraminal stenosis. Appellant reported burning pain in the neck, bilateral shoulders, and low back. On examination, bending backward reproduced burning from the right shoulder down and difficulty raising the right arm above the head. There was no sign of discomfort in the lower back with a negative straight leg

test bilaterally. A lumbar spine x-ray that day demonstrated findings consistent with degenerative changes at L5-S1 and mild facet arthrosis. Right shoulder x-ray demonstrated degenerative changes. Dr. Werns diagnosed neck sprain caused by the employment injury. She advised that other conditions found were not related to the employment injury.

On January 14, 2016 appellant was seen by Dr. Lois S. Saltzman, a Board-certified physiatrist at the employing establishment. Dr. Saltzman reported that the December 16, 2015 cervical MRI scan showed a C3-4 small central disc herniation without compression and no foraminal stenosis, a C4-5 shallow broad-based central disc herniation with mild ventral spinal cord flattening, a C5-6 broad-based left posterolateral disc herniation with mild ventral spinal cord flattening and severe foraminal stenosis, a C7 broad-based central disc herniation, a C7-T1 small central disc herniation, and a T1-2 small noncompressive central disc herniation. Dr. Saltzman noted that appellant did not bring the report to the appointment. She indicated that appellant could not flex or abduct the right shoulder without assistance. Dr. Saltzman indicated that, because she did not have access to all of appellant's records, she could not correlate appellant's findings with the December 10, 2015 work injury. In a January 28, 2016 report, she advised that appellant had been noncompliant regarding diagnostic tests ordered, physical therapy, and occupational therapy. Examination was unchanged. Dr. Saltzman noted that she was referring appellant back to employee health. On January 28, 2016 she advised that employee health had recommended that appellant obtain examination from a primary care physician.

In a February 11, 2016 statement, appellant reported a history of being hit by a patient, who weighed approximately 260 pounds, and landing at an angle on the wall upside down with loss of consciousness. She indicated that when she saw her private physician on December 15, 2015 he told her to stay home until January 29, 2016, and that she was still in pain.

The employing establishment controverted the claim. It noted that there were inconsistent reports regarding the facts of the December 10, 2015 incident. A nursing note on December 10, 2015 indicated that both the patient involved and his roommate reported that appellant tripped over the patient's feet and fell, and that no one pushed her. Also attached were counseling notes in which the nurse manager counseled appellant regarding abuse of leave and leaving work early without permission.

By decision dated March 4, 2016, OWCP accepted neck sprain due to the December 10, 2015 employment injury. It advised appellant to file a claim for compensation (Form CA-7) if she wanted to claim wage loss.

In a second decision dated March 4, 2016, OWCP found that the medical evidence of record was insufficient to establish that additional conditions of mild-to-moderate degenerative disc disease, degenerative changes of L5-S1 with mild facet arthrosis, cervical herniation, and lumbar sprain were caused by the December 10, 2015 employment injury.

Appellant was referred to a medical management nurse in March 2016. She did not appear at an April 1, 2016 scheduled appointment with an orthopedic surgeon at the employing establishment. The nurse noted that appellant was noncompliant in communicating with her.

In April 26, 2016 correspondence, the employing establishment notified OWCP that it had been unable to contact appellant since mid-March 2016. It attached a letter sent to her on March 28, 2016, reminding her of the April 1, 2016 orthopedic appointment. In an April 26, 2016 letter to appellant, the employing establishment informed her of the need to contact her supervisor and schedule a medical appointment to assess her condition.

On May 3, 2016 the employing establishment notified OWCP that, while it had a limited-duty position available for appellant, since she did not keep the April 1, 2016 medical appointment, it could not finalize the position. A job description for the position was attached. The duties involved assisting with feeding patients.

On August 1, 2016 appellant filed a Form CA-7 claim for compensation for wage loss during the period December 13, "2016" to July 22, 2016. The employing establishment indicated that she had not returned to work and had been on leave without pay since December 13, 2015.

Appellant, through counsel, requested reconsideration on August 5, 2016. Counsel maintained that the December 10, 2015 employment injury additionally caused aggravation of degenerative disc disease, degenerative changes of L5-S1 with facet arthrosis, disc herniations at C3-4, C4-5, and C5-6, right shoulder rotator cuff tear, and concussion/head injury.

Counsel submitted an April 14, 2016 report in which Dr. Rasheed U. Jafar, an attending Board-certified internist, advised that appellant had been his patient since August 10, 2015. He indicated that she reported that she was injured on December 10, 2015 when a patient stood from his wheelchair, leaned into her, and pushed her into a corner, causing her to fall and lose consciousness. Dr. Jafar advised that appellant had been medically unable to work since the employment injury which resulted in additional conditions of aggravation of degenerative changes at L5-S1 with facet arthrosis, cervical herniation, lumbar sprain, disc herniations at C3-4, C4-5, and C5-6, right shoulder torn supraspinatus, infraspinatus and subscapularis tendons, and possible concussion/head injury with dysarthria and change of mental status.

In an August 3, 2016 report, Dr. Jonathan Finkelstein, who practices pain medicine, noted a chief complaint of neck pain. He reported a history that appellant was pushed into a wall by a patient where she injured her head, neck, and back. Dr. Finkelstein described the December 16, 2015 cervical MRI scan findings, noting multilevel degenerative changes superimposed on a congenitally narrow spinal canal, left posterolateral disc herniation at C5-6 with mild ventral spinal cord flattening and severe left foraminal stenosis, shallow broad-based central disc herniation at C4-5 with mild ventral spinal cord flattening, and small noncompressive central disc herniations at C3-4, C6-7, C7-T1, and T1-2. He also noted that an April 8, 2016 cervical computerized tomography (CT) scan showed moderate to marked degenerative disc narrowing and hypertrophic spurring at C4-5, C5-6, and C6-7, and mild bony compromise of the neural foramen at these levels bilaterally. Cervical spine examination demonstrated painful decreased range of motion, no spasm, and tenderness on examination. Right shoulder examination revealed painful restricted range of motion. Dr. Finkelstein diagnosed cervical herniated disc, right shoulder pain, facet hypertrophy, and foraminal stenosis of the cervical region. He opined that appellant's neck pain complaints were consistent with her mechanism of injury secondary to the employment injury as reported by her. Dr. Finkelstein advised that she had been rated totally

disabled by her primary care physician, Dr. Jafar. He recommended cervical epidural injections, topical medication, and a right shoulder MRI scan.

In a November 3, 2016 merit decision, OWCP found that the medical evidence submitted was insufficiently rationalized to establish additional employment-related conditions.

Dr. Finkelstein again treated appellant on October 19, 2016 for worsening neck pain that radiated to both arms. Appellant had decreased neck and right shoulder range of motion with tenderness to palpation. Dr. Finkelstein noted his diagnoses and advised that she was totally disabled. On October 25, 2016 he provided lumbar epidural injections.

In a December 1, 2016 decision, OWCP denied appellant's claim for disability compensation for the period December 13, 2015 and continuing. It found that the medical evidence of record did not contain a rationalized explanation on causal relationship.

LEGAL PRECEDENT -- ISSUE 1

An employee has the burden of proof to establish that any specific condition for which compensation is claimed is causally related to the employment injury.[3] Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[4] 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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[5] 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 causal relationship.[6]

It is well established that where employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for periods of disability related to the aggravation. Where the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable. However, the normal progression of untreated disease cannot be stated to constitute "aggravation" of a condition merely because the performance of normal work duties reveal the underlying condition. For the conditions of employment to bring about an aggravation of preexisting disease, the employment must cause acceleration of the disease or precipitate disability.[7]

[3] *Kenneth R. Love*, 50 ECAB 276 (1999).

[4] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[5] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[6] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[7] *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

ANALYSIS -- ISSUE 1

OWCP accepted that a December 10, 2015 employment incident caused neck sprain. The Board finds that appellant has not met her burden of proof to establish that additional conditions were caused by the December 10, 2015 employment incident.

The opinion of a physician supporting causal relationship must be based on a complete factual and medical background, supported by affirmative evidence, must address the specific factual and medical evidence of record, and must provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[8] No physician did so in this case.

The Board notes that the record does not contain a report of the December 16, 2015 cervical MRI scan referenced by Dr. Werns, Dr. Saltzman, and Dr. Friedman. Likewise, a record of the cervical CT scan completed on April 8, 2016 is not in the case record. Dr. Werns provided two interpretations in her January 11, 2016 report. She initially related that the study showed straightening of cervical lordosis, no vertebral body compression fracture or aggressive marrow lesion, a normal spinal cord, unremarkable paraspinal soft tissues, and a congenital narrowing of the spinal canal. On the same report, Dr. Werns also advised that the cervical MRI scan also demonstrated C6-7 uncovertebral and facet hypertrophy that contributed to severe right and moderate left foraminal stenosis. Dr. Saltzman, who reported on January 14, 2016 that appellant did not bring a copy of the December 16, 2015 MRI scan with her, related that it showed a C3-4 small central disc herniation without compression and no foraminal stenosis, a C4-5 shallow broad-based central disc herniation with mild ventral spinal cord flattening, a C5-6 broad-based left posterolateral disc herniation with mild ventral spinal cord flattening and severe foraminal stenosis, a C7 broad-based central disc herniation, a C7-T1 small central disc herniation, and a T1-2 small noncompressive central disc herniation. Dr. Finkelstein reported that the December 16, 2015 study demonstrated noting multilevel degenerative changes superimposed on a congenitally narrow spinal canal, left posterolateral disc herniation at C5-6 with mild ventral spinal cord flattening and severe left foraminal stenosis, shallow broad-based central disc herniation at C4-5 with mild ventral spinal cord flattening, and small noncompressive central disc herniations at C3-4, C6-7, C7-T1, and T1-2. He also noted that the April 8, 2016 cervical CT scan demonstrated moderate-to-marked degenerative disc narrowing and hypertrophic spurring noted at C4-5, C5-6, and C6-7, and mild bony compromise of the neural foramen at these levels bilaterally.

The Board has long held that medical evidence such as a diagnostic study report that does not offer an opinion regarding the cause of a diagnostic condition is of limited probative value on the issue of causal relationship.[9] Furthermore, in the case at hand, without the actual scan reports and, because the physicians above offered differences in interpretation of the December 16, 2015 MRI scan, the Board finds that their interpretations are of diminished probative value and insufficient to establish additional employment-related conditions.

[8] *Robert Broome*, 55 ECAB 339 (2004).

[9] *Willie M. Miller*, 53 ECAB 697 (2002).

While appellant reported to Dr. Werns that she lost consciousness at the time of the December 10, 2015 employment injury, Dr. Werns diagnosed employment-related neck sprain and advised that any other conditions were not due to the work injury.

Dr. Jafar indicated in his April 14, 2016 report that appellant reported that she was injured on December 10, 2015 when a patient stood from his wheelchair, leaned into her, and pushed her into a corner, causing her to fall and lose consciousness. He advised that the December 10, 2015 injury also caused aggravation of degenerative changes at L5-S1 with facet arthrosis, cervical herniation, lumbar sprain, disc herniations at C3-4, C4-5, and C5-6, right shoulder torn supraspinatus, infraspinatus, and subscapularis tendons, and possible concussion/head injury with dysarthria, and change of mental status. As to his August 3, 2016 report, Dr. Finkelstein reported a history that appellant was pushed into a wall by a patient and injured her head, neck, and back. He diagnosed cervical herniated disc, right shoulder pain, facet hypertrophy, and foraminal stenosis of the cervical region. Dr. Finkelstein related that it was his professional opinion that appellant's neck pain complaints were consistent with her mechanism of injury secondary to the employment injury as reported by her.

While the opinion supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, the opinion must be one of reasonable medical certainty, and not speculative or equivocal in character. A medical opinion not fortified by medical rationale is of diminished probative value.[10] Moreover, an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without sufficient rationale, to establish causal relationship.[11] Neither Dr. Jafar nor Dr. Finkelstein offered sufficient rationale explaining how the December 10, 2015 employment injury caused or aggravated their diagnosed conditions. Their reports, therefore, are insufficient to meet appellant's burden of proof.

Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.[12] The Board finds that appellant has not submitted sufficient rationalized medical evidence supporting causal relationship between any of the claimed additional conditions and the October 21, 2011 employment injury.[13]

[10] *W.W.*, Docket No. 09-1619 (issued June 2, 2010).

[11] *Michael S. Mina*, 57 ECAB 379 (2006).

[12] *C.O.*, Docket No. 10-0189 (issued July 15, 2010).

[13] As to appellant's assertion that she also established right shoulder and neurological conditions, the Board's jurisdiction is limited to review of final adverse OWCP decisions issued within 180 days from the filing of the appeal. 20 C.F.R. § 501.3; *see J.B.*, Docket No. 09-2191 (issued May 14, 2010). The record does not contain an OWCP decision on this matter within the Board's jurisdiction.

LEGAL PRECEDENT -- ISSUE 2

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.[14] Furthermore, whether a particular injury causes an employee to be disabled from employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[15] Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[16]

ANALYSIS -- ISSUE 2

The Board finds that appellant has not met her burden of proof to establish that she had employment-related disability beginning December 13, 2015 causally related to the accepted December 10, 2015 neck sprain.

The issue of disability from work can only be resolved by competent medical evidence.[17] The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.[18] A physician's opinion on causal relationship between a claimant's disability and an employment injury is not dispositive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. Where no such rationale is present, the medical opinion is of diminished probative value.[19]

On the date of injury, December 10, 2015, following his examination, Dr. Sakellarios advised that appellant could return to light duty. Although appellant reported on February 11, 2016 that she saw her private physician on December 15, 2015, and he told her to stay home until January 29, 2016, there is no report of record from a physician dated December 15, 2015. Dr. Werns, Dr. Saltzman, and Dr. Friedman did not comment on appellant's work capacity.

In his April 14, 2016 report, Dr. Jafar advised that appellant had been medically unable to work since the December 10, 2015 employment injury due to aggravation of degenerative

[14] *See* 20 C.F.R. § 10.5(f); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[15] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[16] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[17] *R.C.*, 59 ECAB 546 (2008).

[18] *See Sandra D. Pruitt*, 57 ECAB 126 (2005).

[19] *Thaddeus J. Spevack*, 53 ECAB 474 (2002).

changes at L5-S1 with facet arthrosis, cervical herniation, lumbar sprain, disc herniations at C3-4, C4-5, and C5-6, right shoulder torn supraspinatus, infraspinatus and subscapularis tendons, and possible concussion/head injury with dysarthria and change of mental status. These conditions have not been accepted as causally related to the December 10, 2015 employment injury and Dr. Jafar did not relate any disability to the accepted neck sprain. Other than his generalized explanation that appellant was medically unable to work, he failed to offer any rationale for his opinion. The issue of whether a claimant's disability is related to an accepted condition is a medical question, which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.[20] Medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.[21] None of the medical reports of record explain with sufficient rationale how appellant's accepted neck sprain caused her to be disabled from work as of December 13, 2015.[22]

As appellant did not submit sufficient rationalized medical opinion evidence to establish that she was disabled for work beginning December 13, 2015 due to accepted cervical strain, she has failed to establish that the claimed disability was employment related. She was thus not entitled to wage-loss compensation for the period claimed.[23]

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 that additional conditions were causally related to the December 10, 2015 employment injury, and further finds that she has not met her burden of proof to establish that she was totally disabled beginning December 13, 2015 due to the accepted December 10, 2015 employment injury.

[20] *Supra* note 18.

[21] *See Albert C. Brown*, 52 ECAB 152 (2000).

[22] *See S.B.*, Docket No. 13-1162 (issued December 12, 2013).

[23] *N.R.*, Docket No. 14-0114 (issued April 28, 2014).

ORDER

IT IS HEREBY ORDERED THAT the December 1 and November 3, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 12, 2017
Washington, DC

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

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

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