

FACTUAL HISTORY

On July 22, 2016 appellant, then a 59-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on July 21, 2016 she sustained mid-to-low back pain when her desk chair threw her forward onto her desk during an ergonomic evaluation. The claim form did not indicate whether she had stopped work.

In support of her claim appellant submitted an April 11, 2016 therapy request form from Dr. Randall R. Trecha, a treating Board-certified orthopedic surgeon, requesting authorization for core back strengthening based on a diagnosis of lumbar spondylosis without radiculopathy or myelopathy and status post lumbar fusion.

OWCP also received employee health forms dated July 21 and 22, 2016 which were signed by Dr. James Richard Marzolf, a physician specializing in occupational medicine and preventative occupational medicine. The July 21, 2016 form noted that appellant's chair tipped forward and threw her during an ergonomic assessment, while the July 22, 2016 form noted a work injury had been sustained on July 21, 2016. She was diagnosed with low back pain on the July 21, 2016 form and with strained muscles on the July 22, 2016 form. Both forms indicated that appellant was disabled from work until July 29, 2016.

Appellant also submitted forms and a report dated July 22, 2016 from Dr. Randal R. Trecha, a treating Board-certified orthopedic surgeon. In the July 22, 2016 report, Dr. Trecha diagnosed lumbosacral spondylosis, lumbar region other spondylosis with radiculopathy, and spondylosis without radiculopathy or myelopathy. In forms dated July 22 and August 5 and 17, 2016, he indicated that appellant was disabled from work.

On August 31, 2016 appellant was seen by Dr. Kevin Donserm Komes, a Board-certified physiatrist, who diagnosed myofascial pain and myalgia and referred her for physical therapy. Dr. Komes, in clinic notes and a narrative report, dated August 31, 2016, related that appellant was seen for complaints of back pain. Appellant had noted that she had been injured at work on July 21, 2016 when she was thrown forward onto her desk when she went to sit in her chair. Dr. Komes noted that in April 2016 she underwent lumbar fusion at L4-5 and had just been released to full-duty work effective July 21, 2016. A medical history and physical examination findings were detailed. Dr. Komes diagnosed back pain, which he attributed to the July 21, 2016 work incident.

The record also contains physical therapy notes covering the period September 2 to 30, 2016.

In an ambulatory patient departure summary dated September 22, 2016, Dr. Komes noted that appellant was seen for complaints of myofascial pain.

In a September 28, 2016 report, Christina A. Williams, a nurse, released appellant to return to work with restrictions of clerical duty only and 15 minutes of standing every hour. Diagnoses included myofascial lumbar pain with Dr. Komes listed as the provider.

Dr. Komes, on September 28, 2016, diagnosed back pain and referred appellant for physical therapy. He recommended that the physical therapy focus on functional capacity.

Dr. Komes noted that appellant was capable of working clerical duty only and that she required 15 minutes of standing every hour.

On October 11, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for total disability on September 23, 2016.

In an October 26, 2016 letter, OWCP noted that appellant's claim initially appeared to be a minor injury that resulted in minimal lost time from work. It had approved a limited amount of medical expenses without considering the merits of her claim. OWCP reopened appellant's claim due to her claim for wage-loss compensation. It requested that she provide additional factual and medical evidence in support of her traumatic injury claim and afforded her 30 days to respond.

In response, appellant submitted an April 14, 2016 operative report and July 25, 2016 lumbar magnetic resonance imaging (MRI) scan and other medical evidence detailed below.

In a July 22, 2016 report, Dr. Trecha noted that appellant was seen for increased complaints of pain. Appellant told him that on the previous day she had been injured at work when she was thrown forward onto her desk when she went to sit in her chair. Dr. Trecha provided medical and physical histories and examination findings. Diagnoses included lumbar region spondylosis with radiculopathy and lumbar region spondylosis without myelopathy or radiculopathy. Under impression, Dr. Trecha noted lumbar strain and status post anterior and posterior lumbar fusion at L4-5.

On August 5, 2016 Dr. Trecha saw appellant for complaints of right-sided low back and left buttocks pain. Appellant stated that she had excellent relief from her surgery, but since being thrown from her chair at work a few weeks ago she has had muscle spasm lumbar pain. Dr. Trecha provided examination findings and reported changes consistent with the L4-5 posterior and anterior lumbar fusion based on review of a lumbar MRI scan. He diagnosed lumbar spondylosis without radiculopathy or myelopathy and recommended physical therapy.

Appellant also submitted work restriction/disability notes from Dr. Trecha dated August 17, September 30, October 14 and 28, and December 13, 2016. Dr. Trecha indicated that she was unable to work from August 1 to 29, September 13 and 14, October 14 to December 2, 2016, and December 13, 2016 to January 17, 2017.³

Dr. Trecha, in an August 26, 2016 report, noted that appellant was seen for complaints of low back pain. He reiterated history of injury and examination findings from his prior report. Diagnoses included lumbar region spondylosis with radiculopathy, lumbar region spondylosis without myelopathy or radiculopathy, lumbar strain, and status post anterior and posterior lumbar fusion at L4-5.

³ The note contains a typographical error with respect to January 17, 2017. Dr. Trecha wrote January 17, 2016 instead of January 17, 2017.

On October 14, 2016 Dr. Marzolf prescribed physical therapy. In employing establishment progress notes dated October 14 and 28, 2016. Dr. Marzolf noted that appellant was postlumbar fusion currently on work restrictions. He also provided examination findings.

On November 7, 2016 appellant filed wage-loss compensation claims (Form CA-7) for total disability on September 23, 2016 and September 26 to October 8, 2016.

By decision dated December 16, 2016, OWCP denied appellant's claim. It found that the evidence of record established that the July 21, 2016 incident occurred as alleged. However, OWCP also found that the medical evidence failed to establish a medical diagnosis causally related to the accepted work incident.

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 or specific condition for which compensation is claimed is 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 first be determined whether 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 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

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁰ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the

⁴ *Supra* note 1.

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

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

⁷ *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

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

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

¹⁰ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

compensable employment factors.¹¹ 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.¹²

ANALYSIS

Appellant alleged that she injured her back on July 21, 2016 when she was thrown forward out of her chair while in the performance of duty. OWCP accepted that the July 21, 2016 incident occurred as alleged, but denied her claim because it found the medical evidence of record insufficient to establish a medical diagnosis causally related to the accepted work incident.

The Board finds that appellant has failed to meet her burden of proof to establish a back condition causally related to the accepted July 21, 2016 work incident.

Medical evidence submitted to support a claim for compensation should reflect a correct history and should offer a medically-sound explanation of how the claimed work event caused or aggravated the diagnosed condition.¹³ Appellant did not submit the necessary medical evidence to meet this burden of proof.

The only physician who attributed appellant's back condition to the July 21, 2016 work incident was Dr. Komes. In clinic notes and report dated August 31, 2016, he described the July 21, 2016 work incident and diagnosed back pain, which he attributed to the work incident. Although Dr. Komes provided a conclusory opinion which supported causal relationship, he did offer any rationalized medical explanation to support his opinion. Medical evidence that states a conclusion, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴ The need for rationalized medical opinion based on medical rationale is especially important in this case as the evidence suggests that appellant had preexisting degenerative changes to her lumbar spine.¹⁵ The Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to her diagnosed medical condition.¹⁶ While Dr. Komes provided medical diagnoses of back pain, myofascial pain, and myalgia in these reports, he did not, however, provide any rationalized explanation as to how physiologically the accepted

¹¹ *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ *D.D.*, Docket No. 13-1517 (issued April 14, 2014); *Michael S. Mina*, *supra* note 11.

¹⁴ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁵ *E.V.*, Docket No. 17-0417 (issued September 13, 2017).

¹⁶ *Supra* note 12.

incident would have caused appellant's diagnosed conditions.¹⁷ For these reasons, none of Dr. Komes' reports are sufficient to establish appellant's claim.

Appellant submitted medical evidence from Dr. Trecha and Dr. Marzolf in support of her claim. In reports and forms dated July 2 and August 5 and 26, 2016, Dr. Trecha diagnosed lumbosacral spondylosis, lumbar region other spondylosis with radiculopathy, and spondylosis without myelopathy or radiculopathy. He advised that appellant was disabled from work in disability slips covering July 22 to December 13, 2016. While Dr. Trecha reported her statement regarding the July 21, 2016 work incident, he offered no opinion as to whether the incident caused or aggravated the diagnosed conditions. Similarly, Dr. Marzolf also failed to offer any opinion regarding the cause of the diagnosed medical conditions. He detailed how the July 21, 2016 work incident occurred, diagnosed low back pain and strained muscles, and indicated that appellant was disabled from working in forms dated July 21 and 22, 2016. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship and is insufficient to establish her claim.¹⁸ Thus, the reports from Dr. Trecha and Dr. Marzolf are sufficient to meet appellant's burden of proof.

Appellant also submitted physical therapy notes covering the period September 2 to 30, 2016 and a September 28, 2016 final report by Ms. Williams, a nurse. Physical therapists and nurses are not considered physicians as defined under FECA. Therefore, their medical opinions regarding diagnosis and causal relationship are of no probative value and are insufficient to establish appellant's claim.¹⁹

The July 25, 2016 MRI scan of record is also insufficient to establish appellant's claim. The Board has held that reports of diagnostic tests are of limited probative value as they fail to provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions.²⁰

OWCP also received an April 14, 2016 operative report and April 11, 2016 therapy request form from Dr. Trecha. However, this evidence predates the claimed traumatic injury of July 21, 2016 and is, therefore, insufficient to establish causal relationship of the diagnosed condition after July 21, 2016.²¹

¹⁷ See *E.R.*, Docket No. 16-1634 (issued May 25, 2017).

¹⁸ *R.E.*, Docket No. 10-0679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

¹⁹ *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *Roy L. Humphrey*, 57 ECAB 238 (2005).

²⁰ *S.G.*, Docket No. 17-1054 (issued September 14, 2017).

²¹ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.²² Appellant's honest belief that the July 21, 2016 employment incident caused a back injury, however sincerely held, does not constitute medical evidence necessary to establish causal relationship.²³ As appellant has failed to provide a rationalized medical opinion sufficient to establish causal relationship between her claimed injury and the accepted July 21, 2016 employment incident, she has failed to meet her burden of proof.

On appeal appellant argues that prior to her July 21, 2016 work injury she had been doing well following her lumbar fusion. As discussed, the medical evidence submitted fails to contain a rationalized opinion explaining how her diagnosed medical condition was caused or aggravated by the accepted July 21, 2016 work incident. The Board, therefore, finds that appellant has not met her burden of proof to establish a back condition causally related to the July 21, 2016 employment incident.

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 a back condition causally related to the accepted July 21, 2016 employment incident.

²² *D.D.*, 57 ECAB 734 (2006).

²³ *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 16, 2016 is affirmed.

Issued: January 11, 2018
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