

FACTUAL HISTORY

This case has previously been before the Board.² The facts of the case as presented in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On July 24, 2012 appellant, then a 50-year-old resource development specialist, filed a traumatic injury claim (Form CA-1) alleging that, on June 25, 2012, she sustained lumbar and bilateral shoulder injuries after moving tables, chairs, a tent, and other items at work. She did not stop work.

By decision dated February 8, 2013, OWCP denied appellant's claim. It accepted the incident of moving furniture and other items, as alleged on June 25, 2012. However, OWCP found that appellant had not submitted sufficient medical evidence in support of her claim to establish an injury causally related to the accepted incident.

On July 22, 2013 appellant appealed to the Board. By decision dated January 2, 2014,³ the Board affirmed OWCP's February 8, 2013 decision, finding that appellant had not met her burden of proof to establish traumatic back and shoulder injuries as there was insufficient medical evidence supporting causal relationship.

Appellant requested reconsideration on May 30, 2014 and submitted a November 5, 2013 report from Dr. William M. Shanks, a Board-certified orthopedic surgeon, who performed a medical evaluation for a state benefits agency. She also submitted various documents in support of her request for reconsideration.

By decision dated June 10, 2014, OWCP denied modification of its February 8, 2013 decision. It found that the evidence submitted was insufficient to establish causal relationship between any of the diagnosed conditions and the June 25, 2012 employment incident.

On July 16, 2014 appellant again appealed to the Board. By decision dated November 21, 2014,⁴ the Board affirmed OWCP's June 10, 2014 decision, finding that appellant had failed to meet her burden of proof to establish traumatic back and shoulder conditions causally related to the accepted employment incident. The Board found that Dr. Shanks failed to explain how moving furniture on June 25, 2012 at work on June 25, 2012 caused or aggravated the claimed back and shoulder conditions.

During pendency of that appeal, OWCP received a June 26, 2014 report from Dr. Miguel A. Schmitz, an attending Board-certified orthopedic surgeon.

² Docket No. 13-1762 (issued January 2, 2014); Docket No. 14-1620 (issued November 21, 2014); Docket No. 16-0568 (issued September 15, 2016).

³ Docket No. 13-1762 (issued January 2, 2014).

⁴ Docket No. 14-1620 (issued November 21, 2014).

On May 19, 2015 appellant requested reconsideration, contending that OWCP denied her access to medical care. Appellant submitted copies of medical evidence previously of record. She also provided status inquiry correspondence from her elected representatives, and her letters to OWCP requesting information about her claim.

By decision dated November 25, 2015, OWCP denied modification of its prior decision, finding that the evidence of record remained insufficient to establish causal relationship.

On February 3, 2016 appellant again appealed to the Board. By decision dated September 15, 2016,⁵ the Board found that the June 26, 2014 report from Dr. Schmitz was insufficient to meet appellant's burden of proof to establish causal relationship between the diagnosed conditions and the accepted employment incident.

During the pendency of that appeal, appellant submitted copies of evidence previously of record, documents related to her application for Social Security Administration (SSA) benefits,⁶ correspondence to and from her elected representatives, and OWCP's correspondence in response to appellant's inquiries and Congressional inquiries.

Appellant also submitted a January 9, 2016 report from Dr. Schmitz who noted appellant's history of a motor vehicle accident in 2003 which caused minor neck and back injuries. Dr. Schmitz reiterated appellant's account of being assigned to disassemble tents on June 25, 2012, and that appellant had been diagnosed with lumbago. He noted that appellant had undergone a February 25, 2014 lumbar magnetic resonance imaging (MRI) scan, as well as follow-up scans which demonstrated central and foraminal stenosis at L3-4. Appellant was seen on December 10, 2015, at which time she was diagnosed with right carpal tunnel syndrome, lumbago, lumbar spondylosis with radiculopathy, and obesity. Dr. Schmitz explained that appellant's last evaluation occurred on January 9, 2016 and that a head and neck MRI scan study performed on that date demonstrated brain lesions suggestive of an idiopathic demyelinating disease, and C5-6 disc disease. He opined that as appellant "completely denied having any preexisting" lumbar or cervical spine injuries, it was "most appropriate to consider her lumbar spine condition in particular to be related to her on-the-job injury, it appears that there is "direct causation." Alternatively, Dr. Schmitz offered that on a more probable than not basis, "[p]erhaps aggravation would be a closer term for [appellant's] condition as she likely had spondylosis predating the accident on account of the appearance of the spine today."

On April 13, 2017 appellant requested reconsideration. She contended that Dr. Schmitz's January 9, 2016 report was sufficiently rationalized to meet her burden of proof. Appellant argued that OWCP erred in finding that the remainder of the medical evidence of record was insufficient to establish her claim.

⁵ Docket No. 16-0568 (issued September 15, 2016).

⁶ The SSA approved appellant's application for disability benefits effective June 25, 2012, with the first payment retroactive to December 2012.

By decision dated June 19, 2017, OWCP denied modification of its prior decision, as the medical evidence of record failed to establish causal relationship. It found that Dr. Schmitz's January 9, 2016 report was speculative and not well rationalized.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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 timely filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability for which compensation is claimed is causally related to the employment injury.⁸

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.⁹ 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.¹⁰

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 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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.¹¹

ANALYSIS

The Board finds that appellant has not established that her lumbar and bilateral shoulder conditions are causally related to the accepted June 25, 2012 employment incident.

⁷ *Supra* note 1.

⁸ *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

⁹ *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹¹ *Solomon Polen*, 51 ECAB 341 (2000).

Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹² The Board will, therefore, not review the evidence addressed in the prior appeals.

In support of her April 13, 2017 request for reconsideration, appellant submitted a January 9, 2016 report from Dr. Schmitz, an attending Board-certified orthopedic surgeon. Dr. Schmitz noted that appellant sustained minor neck and back injuries in a 2003 motor vehicle accident, but that she “completely denied” any cervical or lumbar injuries prior to June 25, 2012. He did not explain the inconsistency presented by these statements. Dr. Schmitz opined that appellant’s lumbar condition was caused by disassembling a tent on June 25, 2012, but that aggravation was possibly a better term as she likely had preexisting lumbar spondylosis. The equivocal nature of his opinion greatly reduces its probative value.¹³ It lacks the definite, persuasive quality needed to meet appellant’s burden of proof in establishing causal relationship.¹⁴ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹⁵ Dr. Schmitz failed to discuss the details of appellant’s preexisting condition or provide a rationalized opinion explaining how the employment incident contributed to appellant’s medical conditions. A rationalized medical opinion is especially necessary in light of appellant’s preexisting degenerative condition.¹⁶ Dr. Schmitz’s opinion is, therefore, of limited probative value.

Appellant also provided SSA benefits documents. The Board has long held that determinations by other federal agencies do not establish entitlement to benefits under FECA.¹⁷

Additionally, appellant submitted correspondence to and from her elected representatives and OWCP. As the issue on appeal is medical in nature, these documents are irrelevant to the claim as they do not constitute medical evidence.¹⁸

The Board thus finds that appellant failed to meet her burden of proof to establish causal relationship between her claimed lumbar and bilateral shoulder conditions and the accepted June 25, 2012 employment incident.

¹² See *H.G.*, Docket No. 16-1191 (issued November 25, 2016).

¹³ See *Steven S. Saleh*, 55 ECAB 169 (2003).

¹⁴ *Id.*

¹⁵ See *V.D.*, Docket No. 17-1463 (issued December 19, 2017).

¹⁶ See *M.D.*, Docket No. 17-0086 (issued August 3, 2017).

¹⁷ See *Donald Johnson*, 44 ECAB 540, 551 (1993).

¹⁸ Section 8101(2) of FECA provides that medical opinion, in general, can only be given by a qualified physician. 5 U.S.C. § 8101(2). This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by stated law.

On appeal appellant contends that OWCP failed to properly develop the medical evidence of record. She also argues that Dr. Shanks, who performed a November 5, 2013 evaluation on behalf of a state benefits agency, should be considered a second opinion physician in the claim such that his opinion created a conflict with her attending physicians.¹⁹ The Board notes that Dr. Shanks was not selected as a second opinion physician acting on behalf of OWCP in this claim, but a specialist who performed an examination on behalf of a state benefits agency.

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 failed to establish that her lumbar and bilateral shoulder conditions are causally related to the accepted June 25, 2012 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 19, 2017 is affirmed.

Issued: March 28, 2018
Washington, DC

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

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

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

¹⁹ OWCP performed a merit review of Dr. Shanks' report in its June 10, 2014 decision, which was affirmed by the Board in its November 21, 2014 decision under Docket No. 14-1620.