

FACTUAL HISTORY

On July 20, 2016 appellant, then a 39-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that, on June 23, 2016, she experienced a sharp pain in her back while she was repositioning a patient on an air mattress. She stopped work intermittently beginning on June 25, 2016. On the reverse side of the claim form, appellant's supervisor reported that the claimed incident occurred in the performance of duty as alleged.

In a July 7, 2016 note, Dr. Charles R. Schwartz, an internist and treating physician, reported that appellant sustained a back injury and was excused from work until July 18, 2016. In an August 10, 2016 note, he reported that appellant was off work until September 1, 2016.

By letter dated August 16, 2016, the employing establishment controverted the claim arguing that appellant failed to establish causal relationship.

In an August 31, 2016 note, Dr. Daniel Dunham, Board-certified in internal medicine, reported that appellant was restricted from returning to work.

Appellant submitted physical therapy notes dated September 7 through October 5, 2016 documenting treatment for her lower back condition.

By letter dated September 13, 2016, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised of the type of medical and factual evidence needed and she was afforded 30 days to submit the necessary evidence. In a September 6, 2016 note, Dr. Dunham diagnosed low back pain and sciatica, and reported that appellant was to remain off work. In a September 21, 2016 note, he reported that appellant was released to return to work on October 11, 2016.

OWCP also received a September 21, 2016 narrative statement in which appellant explained that, on June 23, 2016, she and another coworker had to adjust a patient weighing over 450 pounds. Appellant noted that, in order to prevent the patient from falling out of bed, she had to quickly lift the mattress under the patient and move it towards herself to reposition it. While performing this maneuver, she immediately felt a sharp pain in her back. Appellant explained that in July 2011 she initially experienced low back pain when pushing and pulling a heavy medical cart at work for which she filed a Form CA-1 at the time. She also explained that her alleged June 23 2016 employment incident resulted in a diagnosis of lumbar stenosis and that she was unable to work as the employing establishment could not accommodate her restrictions.

In a September 22, 2016 diagnostic report, Dr. Miral Jhaveri, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's lumbar spine revealed mild increase in the degenerative endplate changes at L5-S1 when compared with a prior August 30, 2011 study. He noted L5-S1 asymmetric disc bulge to the left with central and left paracentral disc extrusion causing narrowing of the left lateral recess with mild effacement of the traversing left S1 nerve root which was less pronounced when compared with the August 30, 2011 study. Dr. Jhaveri also reported L4-5 small stable broad-based disc protrusion with no spinal canal or foraminal stenosis.

In a September 28, 2016 attending physician's report (Form CA-20), Dr. Dunham reported that appellant was lifting a patient on June 23, 2016 when she experienced pain. He

noted a history of a preexisting 2011 injury based on a lumbar spine MRI scan which showed disc disease. Dr. Dunham reported that appellant's current MRI scan findings revealed L5-S1 disc disease. He checked the box marked "yes" when asked whether the condition was caused or aggravated by the employment activity, noting that "lifting worsens back."

By decision dated October 14, 2016, OWCP denied appellant's claim, finding that the evidence of record failed to establish that her diagnosed back condition was causally related to the accepted June 23, 2016 employment incident.

On October 20, 2016 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. OWCP continued to receive additional evidence.

Physical therapy notes dated October 6 through 12, 2016 documented treatment for appellant's back condition.

In an October 11, 2016 medical note, Dr. Usama Ahmad, Board-certified in internal medicine, reported that appellant was treated on September 29, 2016 by his partner, Dr. Dunham. He reported that, per Dr. Dunham's note, it was reasonable to provide appellant work restrictions of no lifting, and no standing or bending for long periods of time. Dr. Ahmad requested these restrictions be implemented for three weeks from the date of his letter.

In an October 13, 2016 narrative statement, appellant again described the alleged June 23, 2016 employment incident, noting that her back pain continued to worsen. She reported that she had previously filed a Form CA-1 on July 8, 2011 for a work-related back injury under OWCP File No. xxxxxx778.³

A hearing was held on April 25, 2017 where appellant testified in support of her claim. Appellant reported that she previously incurred a herniated disc in 2011, but that she had not had any trouble with her back since that date. On June 23, 2016 she was lifting a patient and immediately began to experience back pain. Appellant alleged that this employment incident caused an aggravation of her herniated disc at L4-5.

Following the hearing, appellant submitted a May 26, 2017 report from Dr. Diane P. Ryan, Board-certified in internal medicine. Dr. Ryan noted that appellant had been a patient at Rush University Internists (RUMC) for over 10 years and that she had been personally treating appellant since April 2016. She reported that appellant had recurrent low back discomfort. A 2011 lumbosacral MRI scan revealed L5-S1 moderate left-sided spinal canal stenosis and compression on left S1 traversing the nerve root for which appellant obtained conservative treatment. Following a reported heavy lifting incident on June 23, 2016, appellant experienced severe exacerbation of low back pain with variable left- and right-sided radicular leg pain. She was initially assessed at RUMC on July 7, 2016 and experienced refractive symptoms despite routine medical management. As such, appellant required further management with an orthopedic spine surgeon/anesthetics. Dr. Ryan reported that appellant returned to work on October 11, 2016 yet continued to experience residual low back pain/bilateral gluteal discomfort

³ The Board notes that the claim was handled administratively by OWCP, allowing payment of limited medical expenses, with no formal adjudication of the claim. The record contains no further information pertaining to appellant's prior traumatic injury claim.

which limited her functional ability. She concluded that appellant's condition had not resolved to her preinjury baseline.

By decision dated June 16, 2017, OWCP's hearing representative affirmed the October 14, 2016 decision finding that the evidence of record failed to establish that appellant's diagnosed lumbar condition was causally related to the accepted June 23, 2016 employment 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 are 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

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁷ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.⁸ 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 claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹

⁴ *Supra* note 2.

⁵ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Elaine Pendleton*, *supra* note 5.

⁸ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁹ *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

OWCP accepted that the June 23, 2016 employment incident occurred as alleged. The issue is whether appellant has met her burden of proof to establish that the accepted employment incident caused her diagnosed lumbar condition.

The Board finds that appellant has not submitted sufficient medical evidence to establish that her current diagnosed lumbar condition was causally related to the accepted June 23, 2016 employment incident.¹⁰

In a September 28, 2016 Form CA-20, Dr. Dunham reported that appellant was lifting a patient on June 23, 2016 when she experienced pain. He noted preexisting disc disease from a 2011 injury, with current MRI scan findings of L5-S1 disc disease. Although Dr. Dunham answered “yes” on a form report when asked if the diagnosis was a result of the employment incident, the Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.¹¹ He failed to provide a sufficient explanation as to the mechanism of injury pertaining to appellant’s traumatic injury claim, namely, how lifting a heavy patient would cause or aggravate appellant’s L5-S1 disc disease.¹² Dr. Dunham’s statement that “lifting worsens back” is vague and generalized and is found to be without sufficient detail pertaining to the cause of her injury.¹³ Without explaining how, physiologically, the movements involved in the June 23, 2016 employment incident caused or contributed to the diagnosed lumbar injury, his opinion is of limited probative value and is insufficient to meet appellant’s burden of proof.¹⁴

In a May 26, 2017 medical note, Dr. Ryan reported that appellant had recurrent low back discomfort, explaining that appellant was a patient with RUMC for over 10 years and that she had personally been treating her since April 2016. She noted a 2011 lumbosacral MRI scan which revealed L5-S1 moderate left-sided spinal canal stenosis and compression on left S1 traversing the nerve root for which she obtained conservative treatment. Following a reported heavy lifting injury on June 23, 2016, appellant experienced a severe exacerbation of low back pain with variable left- and right-sided radicular leg pain, causing her to seek treatment with RUMC on July 7, 2016.

The Board notes that appellant alleged a lower back injury having occurred on June 23, 2016 when she was lifting a patient. While the record reflects a preexisting 2011 lumbar injury, appellant testified that she had no issues with her back until the June 23, 2016 employment incident. The Board notes that Dr. Ryan reported that she began treating appellant in April 2016, approximately two months prior to the alleged employment injury. It is unclear whether

¹⁰ See *Robert Broome*, 55 ECAB 339 (2004).

¹¹ See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

¹² *S.W.*, Docket 08-2538 (issued May 21, 2009).

¹³ See *R.G.*, Docket No. 17-1536 (issued December 5, 2017).

¹⁴ *John W. Montoya*, 54 ECAB 306 (2003).

Dr. Ryan was treating appellant for her back in April 2016 given that she reported no complaints until she lifted a patient at work on June 23, 2016. A physician's opinion must be based on a complete factual and medical background of the claimant.¹⁵ As Dr. Ryan did not explain why she treated appellant in April 2016, this raises doubts pertaining to an alleged lumbar injury having occurred on June 23, 2016. Appellant's medical treatment predates the employment incident.

The Board further notes that Dr. Ryan failed to provide a firm medical diagnosis which could be attributed to the June 23, 2016 employment incident. Rather, Dr. Ryan merely repeated findings pertaining to the 2011 lumbosacral MRI scan with no discussion of appellant's current diagnosis or opinion on the cause of her injury. She did not address why appellant's complaints were not caused by her preexisting degenerative condition, nor did she discuss whether her preexisting injury had progressed beyond what might be expected from the natural progression of that condition.¹⁶ A well-rationalized opinion is particularly warranted when there is a history of preexisting condition.¹⁷ As Dr. Ryan failed to provide a clear diagnosis and opinion regarding causal relationship, her report is of limited probative value.¹⁸

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Schwartz's, Dr. Dunham's, and Dr. Ahmad's medical notes dated July 7 through October 11, 2016 excused appellant from work due to back pain, but did not provide a firm medical diagnosis or opinion on the cause of her injuries. The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.¹⁹

Dr. Jhaveri's September 22, 2016 report interpreted diagnostic studies pertaining to the lumbar spine. The Board has held that diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.²⁰

The physical therapy notes dated September 7 through October 12, 2016 are also insufficient to establish appellant's claim as they were not signed by a physician. As registered nurses, physical therapists, and physician assistants, are not considered physicians as defined under FECA, their opinions are of no probative value.²¹

There is no requirement that federal employment be the only cause of appellant's injury. If work-related exposures caused, aggravated, or accelerated appellant's condition, she is entitled

¹⁵ *Supra* note 9.

¹⁶ *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

¹⁷ *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁸ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁹ *T.G.*, Docket No. 13-0076 (issued March 22, 2013).

²⁰ *See R.S.*, Docket No. 17-1139 (issued November 16, 2017).

²¹ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) 'physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005). *See T.S.*, Docket No. 17-0779 (issued December 11, 2017) (a physical therapist's report is of no probative value regarding the issue of causal relationship).

to compensation.²² However, an award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.²³ Herein, the record lacks rationalized medical evidence establishing causal relationship between the accepted June 23, 2016 employment incident and appellant's lumbar condition. Thus, appellant has failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a lumbar condition causally related to the accepted June 23, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated June 16, 2017 is affirmed.

Issued: March 1, 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

²² See *Beth P. Chaput*, 37 ECAB 158, 161 (1985); S.S., Docket No. 08-2386 (issued June 5, 2008).

²³ *D.D.*, 57 ECAB 734 (2006).