

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

M.J., Appellant)	
)	
and)	Docket No. 17-0725
)	Issued: May 17, 2018
DEPARTMENT OF THE AIR FORCE,)	
WRIGHT-PATTERSON AIR FORCE BASE,)	
OH, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 February 13, 2017 appellant, through counsel, filed a timely appeal from a December 19, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that her herniated cervical disc condition was causally related to the accepted June 11, 2015 employment incident.

FACTUAL HISTORY

On November 6, 2015 appellant, then a 46-year-old logistics management specialist, filed a traumatic injury claim (Form CA-1) alleging that, on June 11, 2015, she sustained a herniated C5-6 disc and cervical disc displacement with radiculopathy pain as a result of her federal employment duties. She recounted that she was tasked to pick-up, carry and hang large magnetic whiteboards on the walls for viewing by management and take down and carry the boards to her cubicle area after their usage. Appellant alleged that she injured her back when she lifted one of the whiteboards to carry back to her desk, which caused her right arm to tingle and hurt.

Dr. Jarrod Curry, an osteopath and diagnostic radiologist, interpreted a June 15, 2015 cervical spine computerized tomography (CT) scan. He found no evidence of fracture or subluxation. Dr. Curry opined that appellant's right upper extremity symptoms were likely secondary to a broad-based disc osteophyte complex at the C5-6 level, which was compressed upon the right ventral aspect of the cord.

In a June 15, 2015 report, Dr. Aivars Vitols, an osteopath and orthopedic surgeon, noted that appellant worked as an accountant and performed lots of typing. He indicated that her right shoulder pain, with radiation down her arm to her hand, began on June 10, 2015. Appellant did not report an injury, but indicated that she had increased her activity at work last week and developed a knot in the back of her right shoulder which radiated toward her head and down her right arm. Dr. Vitols provided an assessment of acute right shoulder pain and capsulitis of the shoulder. He indicated that x-rays of the right shoulder showed mild degenerative changes to the acromioclavicular (AC) joint, but no soft tissue injury or fractures.

In a June 19, 2015 report, Dr. Scott West, an osteopath and neurosurgeon, indicated that appellant's symptoms of right-sided posterior cervical pain with radiation into her right shoulder and down her entire right arm with dysesthesias involving all the fingers of her right hand with the exception of the thumb began about one week ago from an unknown cause. He noted that she had performed heavy lifting at work a week or two prior to the above symptoms. Dr. West noted physical findings and reviewed the June 15, 2015 CT scan of the cervical spine. He provided an impression of herniated cervical disc with spondylosis C5-6 right. Appellant was scheduled for one month of physical therapy and cervical epidural injections.

On June 29, 2015 appellant underwent a cervical epidural steroid injection. She went to physical therapy from July 10 to 16, 2015, but was discharged on August 25, 2015 as she had stopped attending therapy.

In a November 9, 2015 statement, G.B., a coworker, related that appellant assisted in a cubicle reconstruction and that she had unpacked and carried large whiteboards to various locations. He stated that the whiteboards were not light as he had moved some of the whiteboards short distances within the visual display areas. In another November 9, 2015 statement, M.B., a

coworker, stated that he had delivered approximately 15 large white magnetic dry-erase boards to appellant. He also saw her working on the whiteboard project.

By development letter dated November 16, 2015, OWCP advised appellant of the deficiencies in her claim and requested additional factual and medical evidence, including a detailed narrative report from her physician, which included a history of the injury and a medical explanation with objective evidence of how the reported work incident caused or aggravated the claimed conditions. Appellant was afforded 30 days to submit such evidence.

In response, OWCP received a December 11, 2015 request from appellant for additional time to respond. Additional e-mails from appellant's coworkers in response to the employing establishment's investigation into appellant's injury were received. OWCP also received a copy of e-mails appellant had sent to the employing establishment describing her injury. In an August 14, 2015 e-mail, appellant again described her employment activities regarding the whiteboard project. She alleged that her back followed by her arm began to hurt on June 11, 2015. Appellant noted that she had complained of the pain to her coworkers on June 11, 2015. She went to the emergency room on June 15, 2011 and was told that she had a herniated disc at C5-6 and that the pain in her right arm was an impinged nerve.

In a December 16, 2015 attending physician's form report (Form CA-20), Dr. West diagnosed herniated disc with spondylosis. He checked a box marked "yes" indicating that the condition was caused or aggravated by employment activity and added that "patient had no symptoms prior to injury." For the history of injury and findings, Dr. West noted "see enclosures." No further evidence was attached.

By decision dated December 17, 2015, OWCP denied the claim, finding that appellant had not established fact of injury. It found that the evidence of record was insufficient to establish that the event(s) occurred as alleged as appellant had not answered the questions that were sent with the development letter. OWCP also noted that there was no medical evidence of record which contained a diagnosis that could be connected to the work injury or event.

On September 26, 2016 OWCP received counsel's March 18, 2016 request for reconsideration.

OWCP received several interoffice e-mails from May 18 to November 9, 2015 regarding appellant's alleged injury and exhibits regarding the whiteboard project.

In a different June 19, 2015 report, Dr. West indicated that appellant's cervical pain started one and a half weeks ago, while driving to work. He noted that she saw an orthopedic surgeon, who had diagnosed a displaced rib which was manipulated back in place. Dr. West also noted the progression of her neck pain and that she was seen in the emergency room. He noted that appellant's symptoms of right-sided posterior cervical pain with radiation into her right shoulder and down her entire right arm with dysesthesias involving all the fingers of her right hand with the exception of the thumb began about one week ago from an unknown cause. Appellant indicated that she had performed heavy lifting at work a week or two prior to the above symptoms. Dr. West

noted physical findings, his review of the June 15, 2015 CT scan of the cervical spine and provided an impression of herniated cervical disc with spondylosis C5-6 right.

In a July 22, 2016 report, Dr. West indicated that appellant was seen one year ago with a new onset of neck pain. He noted that she had some improvement in her symptoms following physical therapy and injections and had returned to work. However, over the winter, her pain gradually increased. Appellant stated the initial onset of symptoms began following a work injury of June 11, 2015 while moving whiteboards. Dr. West provided an impression of herniated cervical disc C5-6 and recommended surgery. On September 6, 2016 she underwent microscopic anterior cervical discectomy with allograft fusion C5-6.³

In an October 11, 2016 report, Dr. West stated that he initially evaluated appellant on June 19, 2015 when she presented with right-sided posterior cervical pain with radiation into her right shoulder, right arm, and right hand involving all fingers of her right hand with the exception of her thumb. During that visit, appellant stated that she had done some heavy lifting at work approximately one week prior to the date of the onset of her symptoms. Dr. West indicated that a CT scan of appellant's cervical spine demonstrated a disc herniation with spondylosis at the C5-6 level on the right and that he had recommended conservative care. Approximately one year later, on July 22, 2016, he saw appellant for continued pain in the cervical spine and right shoulder. During that visit, appellant had stated that her work injury occurred on June 11, 2015 when she lifted some 80-pound magnetic whiteboards at work. She was off work for two weeks and returned, but had continued difficulties. Dr. West noted that appellant's January 21, 2016 MRI scan of the cervical spine showed a herniated disc with spondylosis at C5-6. He indicated that she had surgery at that level on September 6, 2016 and that her arm pain had resolved following surgery. Dr. West opined that, given the history he was presented with, appellant's disc herniation at the C5-6 level was the direct result of her work injury. He explained that she had a significant disc herniation at that level and that her pain persisted until surgery relieved the pressure.

In an October 17, 2016 statement, appellant again explained that her supervisor tasked her to disassemble, move and hide cubical walls, overhead storage bins, desks, and cabinets in three separate areas of the building in May 2015. The reconfiguration of the cubicles occurred over a week and she used her own tools from home. Over a period of several weeks leading up to June 11, 2015, appellant had stored, delivered and hung the magnetic white boards. The magnetic whiteboards were heavy and fell as she could not get them on the hooks. On the morning of June 10, 2015, while driving to work, appellant felt sore and had pain in her right upper back. On June 11, 2015 she carried a whiteboard from her cubicle approximately 30 feet and hung it on the wall. Appellant also removed the desks and filing cabinets. Once management viewed the whiteboards, she took down the whiteboards and carried them back to her cubicle. When appellant turned around after lifting the magnetic whiteboard, she felt an uncomfortable sensation down her right arm. She told her coworker about what happened and that her arm hurt. Appellant stayed home on June 11 to 13, 2015 due to the pain and then went to urgent care.

OWCP forwarded a statement of accepted facts (SOAF) and the medical record to Dr. Arnold T. Berman, a Board-certified orthopedic surgeon, its district medical adviser (DMA)

³ Treatment notes from Dr. West dated October 7, 2016 and an October 7, 2016 magnetic resonance imaging (MRI) scan report indicated a good surgical result.

for a determination as to whether appellant's herniated disc at C5-6 was a consequence of the claimed June 11, 2015 employment incident. In a November 1, 2016 report, the DMA noted appellant's history of injury, his review of the SOAF and the medical records. He stated that appellant had significant preexisting degenerative disease at the C5-6 level. The DMA stated that the onset of pain was not work related as it occurred while driving to work, which was a normal activity. He opined that the pain was not occupationally related and the work-related activities were not competent to produce the herniated disc and subsequent surgical procedure. Rather, the condition was caused by a degenerative basis and would have occurred with normal activity regardless of the occupational requirements. Therefore, the DMA opined that appellant's C5-6 herniated disc and subsequent anterior cervical discectomy and fusion were not caused by a work injury.

By decision dated December 19, 2016, OWCP modified its prior decision to reflect that fact of injury was established, but it denied the claim as the medical evidence of record was insufficient to establish that appellant's diagnosed cervical condition was causally related to the accepted 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 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

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 he or she actually experienced the employment incident that is alleged to have occurred.⁷ 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.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

⁴ *Supra* note 2.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

⁹ *Deborah L. Beatty*, 54 ECAB 340 (2003).

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 factors identified by the claimant.¹⁰ Neither the 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.¹¹

ANALYSIS

The Board finds that appellant has not established that her diagnosed herniated cervical disc condition was causally related to the accepted employment incident.

OWCP accepted that the June 11, 2015 work incident occurred as alleged and that a medical diagnosis had been provided. However, it denied the claim, finding that the medical evidence of record failed to establish causal relationship between the June 11, 2015 employment incident and the claimed C5-6 herniated disc and subsequent anterior cervical discectomy and fusion.

Medical evidence submitted to support a claim for compensation should reflect a correct history of injury and should offer a medically-sound explanation of how the employment incident caused or aggravated the diagnosed condition.¹² Appellant did not submit medical evidence sufficient to meet her burden of proof.¹³

In his June 15, 2015 report, Dr. Vitols related that appellant's problems with right shoulder pain and radiation down her arm to her hand began June 10, 2015. He noted that she had increased her activity at work the week before and developed a knot in the back of her right shoulder. While Dr. Vitols provided an assessment of acute right shoulder pain and capsulitis of shoulder, he did not mention the June 11, 2015 employment incident or indicate what increased activities appellant had been involved in at work.¹⁴ Dr. Vitols also did not provide an opinion as to whether the diagnosed condition was due to the accepted work-related activity of June 11, 2015. The Board has found that medical evidence that does not offer any opinion regarding the cause of an

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² *S.H.*, Docket No. 17-1447 (issued January 11, 2018); *D.D.*, Docket No. 13-1517 (issued April 14, 2014); *Michael S. Mina*, 57 ECAB 379 (2006).

¹³ *See R.H.*, Docket No. 18-0021 (issued March 21, 2018).

¹⁴ *Supra* note 11.

employee's condition is of limited probative value on the issue of causal relationship.¹⁵ Thus, this report is insufficient to establish appellant's claim.

In several reports, Dr. West provided an impression of herniated cervical disc with spondylosis C5-6 right. In his June 19, 2015 report, he indicated that appellant's cervical pain started one and a half weeks ago while driving to work and that her symptoms of right-sided posterior cervical pain with radiation into her right shoulder, arm and hand began about one week ago from an unknown cause. Dr. West noted that appellant had done heavy lifting at work a week or two prior to the above symptoms, but did not indicate what the heavy lifting involved and the duration of such activity. While he indicated some awareness of appellant's employment activity during the period surrounding June 11, 2015, Dr. West failed to note any specific incident on June 11, 2015 and he failed to provide an opinion regarding appellant's diagnosed condition.¹⁶ As such, his report did not reflect a correct history of injury and did not offer a medically-sound explanation of how the employment incident caused or aggravated the diagnosed condition.¹⁷

In his December 15, 2015 Form CA-20 report, Dr. West again diagnosed herniated disc with spondylosis. He, again, offered no explanation regarding appellant's history of injury, specifically the accepted June 11, 2015 employment incident; rather, he noted "see enclosures" which were not attached. Dr. West's opinion is therefore also of limited probative value as it is not based on a proper history of injury.¹⁸ Although Dr. West noted that appellant was asymptomatic prior to the injury, the lack of symptoms prior to an employment injury does not in itself provide rationale in support of causal relationship.¹⁹ Thus, this report is insufficient to establish appellant's claim.

In his July 22, 2016 report, Dr. West noted that appellant stated the initial onset of symptoms began following a work injury of June 11, 2015 while moving whiteboards. He provided an impression of herniated cervical disc C5-6 and recommended surgery. Dr. West, however, did not offer his own opinion on causal relationship. As previously indicated, medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.²⁰

In an October 11, 2016 report, Dr. West described his interactions with appellant on June 19, 2015 and July 22, 2016 and that he had diagnosed herniated cervical disc C5-6 based on objective studies. During the July 22, 2016 visit, appellant stated that her work injury occurred on June 11, 2015 when she lifted some 80-pound magnetic white boards at work. Dr. West opined that, given the history he was presented with, appellant's C5-6 disc herniation was the direct result

¹⁵ *R.E.*, Docket No. 10-0679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

¹⁶ *Id.*

¹⁷ *Supra* note 11.

¹⁸ *Id.*

¹⁹ *See Walter J. Neumann, Sr.*, 32 ECAB 69 (1980).

²⁰ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Willie M. Miller*, 53 ECAB 697 (2002); *Michael E. Smith*, 50 ECAB 313 (1999).

of her claimed work injury. He indicated that she had a significant disc herniation at that level and that her pain persisted for an extended period of time until surgery was performed to relieve the pressure. However, Dr. West did not provide a rationalized medical opinion relating the diagnosed condition to the accepted June 11, 2015 employment incident.²¹ While he appeared to know that appellant's heavy lifting at work one week prior to the onset of her symptoms involved lifting heavy magnetic whiteboards, Dr. West did not provide an explanation as to how the cervical herniated disc condition was related to the lifting events on June 11, 2015. A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.²² Rather, he generally opined that based on the history given, appellant's disc herniation was the direct result of her claimed work injury. Dr. West provided no discussion on the role of her preexisting neck condition, if any, may have played a role in relation to the disc herniation and the subsequent need for surgery. Without explaining how physiologically the lifting events of June 11, 2015 caused or contributed to the diagnosed condition, Dr. West's diagnosis of cervical herniated disc at C5-6 and opinion on causal relationship is of limited probative value.²³

The remainder of the evidence appellant submitted to the record, including reports of diagnostic testing, are insufficient to establish the claim as it fails to provide an opinion on causal relationship between appellant's job, the June 11, 2015 employment incident, and her diagnosed conditions.²⁴

The Board also notes that OWCP's DMA explained that appellant's claimed work injury could not have caused the cervical herniated disc condition as the condition was degenerative in nature and had occurred in the course of normal activities prior to the accepted employment event.

On appeal counsel argues that the decision is contrary to fact and law. As discussed above, none of the medical evidence appellant submitted constituted rationalized medical evidence, based upon a specific and accurate history of employment conditions, which were alleged to have caused or exacerbated her medical condition.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.²⁵ An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation. Causal relationship must be based on rationalized medical opinion evidence.²⁶ As appellant has not submitted a rationalized medical opinion supporting that her cervical condition was causally

²¹ See *Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

²² *M.B.*, Docket No. 16-0884 (issued September 8, 2016).

²³ See *J.P.*, Docket No. 16-0954 (issued December 13, 2016); see *Lee R. Haywood*, 48 ECAB 145 (1996).

²⁴ *L.L.*, Docket No. 16-0896 (issued September 13, 2016).

²⁵ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

²⁶ *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).

related to the accepted June 11, 2015 employment incident, she has not met her burden of proof to establish an employment-related traumatic injury.²⁷

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 her herniated cervical disc was causally related to the June 11, 2015 accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 19, 2016 is affirmed.

Issued: May 17, 2018
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

²⁷ See *E.V.*, Docket No. 17-0269 (issued April 4, 2018).