

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

A.B., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS HEALTH ADMINISTRATION,
Shreveport, LA, Employer**

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**Docket No. 18-0577
Issued: October 10, 2018**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 23, 2018 appellant filed a timely appeal from a July 28, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that her lumbar conditions are causally related to the accepted November 20, 2015 employment incident.

FACTUAL HISTORY

On July 7, 2016 appellant, then a 51-year-old lead medical supply technician, filed a traumatic injury claim (Form CA-1) alleging that on November 20, 2015 she sustained lower back

¹ 5 U.S.C. § 8101 *et seq.*

pain radiating down to her legs while leaning over a sink while in the performance of her federal employment duties. She further explained that her low back condition initially occurred on July 19, 2013 when she attempted to sit on a stool that rolled away causing her to fall to the floor.² Appellant first received medical care on April 4, 2016 and notified her supervisor on July 7, 2016.

By development letter dated September 13, 2016, OWCP informed appellant that the evidence of record was insufficient to support her claim. It advised her of the medical and factual evidence needed. OWCP afforded appellant 30 days to submit the necessary evidence.

In support of her claim, appellant submitted medical and diagnostic reports from 2013 and 2014 documenting treatment for her prior work-related lumbar sprain. A July 24, 2013 lumbar spine x-ray revealed mild spondylosis of the mid and lower lumbar spine most evident at L5-S1, degenerative joint disease of the bilateral SI joints, and a 2.1 centimeter rounded sclerotic focus projecting over the left sacrum.

In medical reports dated from August 6, 2013 to June 3, 2014, Dr. Lewis C. Jones, a Board-certified orthopedic surgeon, documented treatment for appellant's lumbar conditions following a July 19, 2013 work incident when she sat down on a stool at work which rolled away from her, causing her to fall on her buttocks. He diagnosed lumbar spine sprain and tendinitis in the right posterior rib cage. A January 9, 2015 lumbar magnetic resonance imaging (MRI) scan revealed a degenerative disc with moderate annular bulge at L5-S1, and moderate lateral recess stenosis bilaterally secondary to facet hypertrophy. Dr. Jones noted that L1 through L4 revealed normal disc, no stenosis, and no herniated nucleus pulposus (HNP).

Appellant submitted medical reports dated June 27, 2014 to July 27, 2016 from Dr. Pierce D. Nunley, a Board-certified orthopedic surgeon. In a June 27, 2014 initial evaluation, Dr. Nunley reported that she was referred from Dr. Jones for evaluation of pain in her back, buttock, and legs since the work incident on July 19, 2013. He diagnosed a discogenic element of back pain, bilateral lower extremity radiculopathy, lumbar stenosis, multilevel lumbar spondylosis, and multilevel lumbar disc derangement. Dr. Nunley opined that, based on the pathology, appellant had discogenic issues at L5-S1 and L4-5 internal disc derangement.

In a February 22, 2016 initial evaluation, Dr. Nunley reported that appellant was evaluated for back, buttock, and leg pain in 2014 following a July 2013 work injury. He noted that she returned with similar pains and new symptoms. At that time, appellant was diagnosed with

² The record reflects that on July 19, 2013 appellant sustained an injury when she slipped off her stool and fell to the floor under OWCP File No. xxxxxx667. OWCP accepted the claim for contusion of back. Appellant resumed work under a light-duty assignment. On April 22, 2016 she filed a notice of recurrence (Form CA-2a) alleging the need for additional medical treatment due to increased pain. In a May 24, 2016 OWCP questionnaire, appellant reported that, while working in the decontamination area, she was leaning over the sink to clean and experienced intense pain in her back in November 2015. By decision dated June 21, 2016, OWCP denied her claim for a recurrence of disability as the medical evidence of record failed to establish a material change/worsening of her accepted work-related condition. It noted that appellant's case remained closed and that she should consider filing a new Form CA-1 for a traumatic injury claim.

The Board notes that appellant filed an April 22, 2016 occupational disease claim (Form CA-2) under this current claim, OWCP File No. xxxxxx870. On August 2, 2017 following the July 28, 2017 decision, OWCP combined File Nos. xxxxxx667 and xxxxxx870 with the former serving as the master file.

multilevel lumbar disc derangement, discogenic pain, radicular pain, spondylosis, and radiculopathy. She underwent physical therapy and bilateral L5 injections which improved her condition for some time. Dr. Nunley compared appellant's current lumbar x-rays with those from June 27, 2014 which showed worsening spondylosis at L5-S1, as well as worsening of retrograde listhesis that was not very evident on the initial visit. He diagnosed a discogenic element of back pain, lumbar radiculopathy, L5-S1 spondylolisthesis, worsening L5-S1 spondylosis, and spondylosis with radiculopathy.

In a May 19, 2016 narrative report, Dr. Nunley reported that appellant was initially evaluated in 2014 due to a July 19, 2013 work-related injury when a stool slipped from under her causing her to fall to the ground. Appellant complained of pain in her back, hips, and legs, denying any pain prior to this injury. Dr. Nunley opined that it was reasonable to conclude that the pain in her back and legs was more likely than not due to her work injury. Appellant's current symptoms included back pain going to her buttocks and thighs anteriorly and posteriorly, and physical examination findings revealed positive straight leg raise bilaterally, diminished patella reflexes, absent Achilles reflexes, but no strength deficits. Dr. Nunley reported that a January 8, 2014 MRI scan revealed disc derangement at L4-5 and L5-S1, moderate at L4-5 with some lateral stenosis more significant at L5-S1. He diagnosed spondylosis with radiculopathy from L1 through L5, and spondylosis with radiculopathy L5-S1.

In a July 27, 2016 report, Dr. Nunley reported that appellant was working a light-duty job and complained of continued pain. He reported that she never had a complete resolution of her previous problem and was just able to live with it. Dr. Nunley opined that this was evidence of an exacerbation of appellant's previous injury.

By decision dated September 20, 2016, OWCP denied appellant's claim finding that the evidence of record failed to establish that her diagnosed condition was causally related to the accepted November 20, 2015 employment incident.

On October 20, 2016 appellant requested an oral hearing before an OWCP hearing representative.

In support of her claim, appellant submitted a September 27, 2016 electromyography study from Dr. David N. Adams, Board-certified in physical medicine and rehabilitation. Dr. Adams reported that examination of the bilateral lower extremities and related lumbar paraspinal muscles revealed no electrodiagnostic evidence of radiculopathy, neuropathy, or myopathy in the lower extremities.

Appellant also submitted medical reports dated September 20 and October 17, 2016 from Dr. Nunley. A September 20, 2016 lumbar spine MRI scan revealed that her discs from L1 through L4 were unremarkable, L4-5 showed broad-based disc bulge, there was bilateral mild subarticular stenosis and mild internal disc derangement, and L5-S1 revealed modic endplate changes and central disc herniation with mild-to-moderate subarticular neuroforaminal stenosis bilaterally.

A hearing was held on May 23, 2017 during which appellant testified in support of her claim. She reported that she initially sustained a work-related injury on July 19, 2013 and was placed on limited duty, but continued to work. The hearing representative noted that appellant's

prior claim was accepted for a back contusion and it did not appear that it was ever expanded to include additional conditions. Appellant reported that on November 20, 2015, she was leaning over a sink to clean at work and experienced pain in her lower back down to her legs. She reported that nothing really happened to cause her a new injury as she was simply leaning over the sink, and when she stood up pain radiated down her back. Appellant was unclear if this should be considered a traumatic injury or a recurrence of her prior claim. The hearing representative advised appellant to provide a report from her treating physician discussing whether her current condition was causally related to her employment injury or prior injury. The record was held open for 30 days.

By decision dated July 28, 2017, OWCP's hearing representative affirmed the September 20, 2016 decision finding that the evidence of record failed to establish that appellant's lumbar injury was causally related to the accepted November 20, 2015 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵

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.⁶ 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.⁷ 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.

³ *Supra* note 1.

⁴ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Elaine Pendleton*, *supra* note 4.

⁷ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her lumbar condition is causally related to the accepted November 20, 2015 employment incident.⁹

The record reflects that appellant had a prior July 19, 2013 work-related lumbar injury which OWCP accepted for back contusion under File No. xxxxxx667. By decision dated June 21, 2016, OWCP denied her claim for a recurrence of disability having occurred on or around November 2015. Appellant subsequently filed a Form CA-1 in the current claim alleging a November 20, 2015 traumatic injury when she was leaning over a sink and experienced back pain.

In support of her claim, appellant submitted Dr. Jones and Dr. Nunley's medical reports dating back to 2013 and 2014, which documented treatment for her prior July 19, 2013 work-related lumbar injury. The Board notes that she is asserting a new injury to the same area of the body. While the reports provide detailed findings pertaining to her lumbar medical history, they predate the claimed November 20, 2015 date of injury. As such, the reports are of no probative value to establish causal relationship to the November 20, 2015 employment incident.¹⁰

Appellant also submitted more recent reports from Dr. Nunley dated February 22 to October 17, 2016. Dr. Nunley provided treatment for discogenic element of back pain, bilateral lower extremity radiculopathy, lumbar stenosis, multilevel lumbar spondylosis, and multilevel lumbar disc derangement. He opined that it was reasonable to conclude that the pain in her back and legs was more likely than not due to her work injury. The Board finds that the opinion of Dr. Nunley is not well rationalized.

In this instance, appellant has alleged that a traumatic injury occurred on November 20, 2015 when she was leaning over a sink to clean for an extended period and felt pain radiating down her back and legs. Dr. Nunley failed to make note of the November 20, 2015 employment incident or the circumstances surrounding the injury. While he provided various lumbar diagnoses, he did not provide an opinion that this work incident caused or aggravated appellant's diagnosed lumbar conditions. Without an accurate history of injury, any opinion pertaining to causal relationship is of limited probative value. The Board has held 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 the diagnosed medical condition.¹¹ Dr. Nunley's statement that appellant's pain in her back and legs was more likely than not due to

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *See Robert Broome*, 55 ECAB 339 (2004).

¹⁰ *See generally J.P.*, Docket No. 14-0087 (issued March 14, 2014).

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

her work injury is speculative and he appears to relate her current injury to the prior July 19, 2013 employment injury. Without explaining how physiologically the movements involved in the November 20, 2015 employment incident caused or contributed to the diagnosed lumbar conditions, Dr. Nunley's reports are of limited probative value and insufficient to meet appellant's burden of proof.¹²

In a February 22, 2016 report, Dr. Nunley compared appellant's current lumbar x-rays with those from June 27, 2014 which showed worsening spondylosis at L5-1 as well as worsening of retrograde listhesis that was not very evident on the initial visit. He further noted that she complained of new symptoms. While this provides support for a worsening of appellant's condition since the July 19, 2013 employment incident, it is unclear if the cause is due to a recurrence of her original injury, the November 20, 2015 employment incident, or a result of a preexisting condition and degenerative changes. Dr. Nunley failed to discuss whether her preexisting injury had progressed beyond what might be expected from the natural progression of that condition.¹³ A well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.¹⁴

Dr. Nunley explained that he treated appellant in 2014 where she improved for some time after undergoing physical therapy and bilateral L5 injections, but returned on July 22, 2016 with similar pains and new symptoms. In his July 27, 2016 report, he reported that she never had a complete resolution of her previous problem and was just able to live with it. Dr. Nunley opined that it was evident that this was an exacerbation of her previous injury. The Board notes that it appears that he is attributing appellant's condition to a recurrence of her July 19, 2013 employment injury under OWCP File No. xxxxxx667.¹⁵ As such, his reports are insufficient to meet appellant's burden of proof.

The remaining medical evidence of record is also insufficient to establish causal relationship between appellant's lumbar injury and the accepted November 20, 2015 employment incident. The diagnostic reports simply interpret imaging studies with no firm medical diagnosis or opinion on the cause of appellant's injury.¹⁶ The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of no probative value.¹⁷ Any medical opinion evidence appellant may submit to support her claim should reflect a correct

¹² See *L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

¹³ *R.E.*, Docket No. 14-0868 (issued September 24, 2014).

¹⁴ *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁵ A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment. 20 C.F.R. § 10.5(x); see *S.F.*, 59 ECAB 525 (2008). See 20 C.F.R. § 10.5(y) (defines recurrence of a medical condition as a documented need for medical treatment after release from treatment for the accepted condition).

¹⁶ It is not possible to establish the cause of a medical condition, if the physician has not stated a firm medical diagnosis. *T.G.*, Docket No. 13-76 (issued March 22, 2013).

¹⁷ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

history and offer a medically sound explanation by the physician of how the specific employment incident, in particular physiologically, caused or aggravated her lumbar injury.¹⁸

As the evidence of record lacks rationalized medical evidence establishing causal relationship between the accepted November 20, 2015 employment incident and appellant's diagnosed lumbar injuries, she has failed to meet her burden of proof.

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 lumbar conditions are causally related to the accepted November 20, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 28, 2017 is affirmed.

Issued: October 10, 2018
Washington, DC

Christopher J. Godfrey, 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

¹⁸ *Id.*