United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
and	)	**Docket No. 18-0969**
	)	**Issued: March 27, 2019**
DEPARTMENT OF THE ARMY, WALTER REED NATIONAL MILITARY MEDICAL CENTER, Bethesda, MD, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 10, 2018 appellant filed a timely appeal from a December 22, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish lumbar and/or right shoulder conditions causally related to an April 7, 2016 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the December 22, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On April 15, 2016 appellant, then a 64-year-old radiology technology supervisor, filed a traumatic injury claim (Form CA-1) alleging that on April 7, 2016 she injured her lower back and right shoulder while in the performance of duty. She stated that she attempted to sit down on her office chair, but it rolled away causing her to hit her buttocks on the floor. Appellant also claimed to have injured her right shoulder while trying to hold onto a second chair. She described her injuries as right shoulder dislocation and lower back strain. On the reverse side of the Form CA-1, the employing establishment indicated that appellant stopped work on April 8, 2016 and returned to work on April 11, 2016. Appellant's supervisor, B.F., noted that appellant was injured in the performance of duty. He further noted that his knowledge of the facts about the injury agreed with appellant's statement. Although appellant reportedly received medical treatment on April 11, 2016, no additional evidence accompanied the Form CA-1.

On November 2, 2017 appellant filed a notice of recurrence for medical treatment only (Form CA-2a). She identified January 18, 2017 as the date of recurrence. Appellant explained that, although she returned to work following her injury, she was in constant pain due to her back and shoulder injuries. She reported undergoing several months of physical therapy, as well as self-directed therapy at her home swimming pool, but her pain never subsided. Appellant indicated that surgery was not an option, and that she was currently considering other treatment options.

In a November 17, 2017 development letter, OWCP informed appellant that initially her claim appeared to be a minor injury that resulted in minimal or no lost time from work and continuation of pay had not been controverted by the employing establishment. It indicated that her claim was administratively handled to allow payment of a limited amount of medical expenses. However, appellant's claim was now being reopened for adjudication because she had filed a claim for recurrence. OWCP requested that she submit additional factual information and a narrative medical report from her physician that included a diagnosis and a reasoned explanation as to the relationship between the diagnosed condition(s) and the reported work incident. It afforded appellant 30 days to submit the requested information.

On December 12, 2017 OWCP received appellant's completed factual development questionnaire. Appellant noted that her injury occurred at 11:00 a.m. on April 7, 2016. However, appellant did not respond to eight of the nine specific areas of inquiry.

OWCP also received an April 25, 2016 e-mail from appellant's supervisor, B.F., regarding receipt of her Form CA-1.

On April 11 and 12, 2016 Dr. Sharda Katyal, a Board-certified physiatrist, examined appellant for right arm and lower back pain from a work-related injury. Appellant reported working as a supervisor in radiology and, on April 7, 2016, she fell from her chair at work and broke her fall with her right arm causing injuries to her right shoulder and lumbar spine. After the fall, she treated herself with over-the-counter pain medication. Appellant's history was significant for chronic low back pain, lumbar fusion at L5-S1, and right knee surgery in 2012. She noted findings on examination of right shoulder pain on range of motion, tenderness on palpation of the deltoid muscle, pain of lumbosacral spine on range of motion, and tenderness on palpation of the coccyx. Dr. Katyal diagnosed right shoulder and lumbar sprains, and unspecified inflammatory spondylopathy -- sacral and sacrococcygeal region.

On April 15, 2016 Dr. Benjamin K. Potter, a Board-certified orthopedist, treated appellant for shoulder pain after a fall. Appellant's history was significant for lumbar spine fusion at L4-5 in 2010. Dr. Potter noted pain with range of motion of the right shoulder and decreased sensation over the lateral aspect of the right shoulder. He noted x-rays of the right shoulder revealed no fracture, inferior subluxation, degenerative changes, stable lumbar spine hardware, and spondylolisthesis of L3. Dr. Potter diagnosed status post fall and shoulder pain and released appellant to work without limitations. He recommended physical therapy.

On April 20, 2016 Dr. Katyal treated appellant in follow-up for pain in the right shoulder and lower back. Appellant was referred to an orthopedic surgeon after x-rays of the right shoulder and lumbar spine dated April 11, 2016 revealed subluxation of humeral head and findings of bilateral pedicular screws not connected by rods in her lumbar spine. Dr. Katyal diagnosed unspecified sprain of the right shoulder joint and sprain of the ligaments of the lumbar spine. On April 27, 2016 she treated appellant for an April 7, 2016 work injury in which a chair slid back out from under her and she fell hitting the sacrococcygeal region sustaining a lumbar sprain at L4-S1.

Dr. Katyal saw her again on October 31, 2017, for secondary osteoarthritis of the right shoulder and spondylolisthesis of the lumbar region. She noted tenderness on palpation of the shoulders, shoulder pain elicited with movement, tenderness on palpation of the anterior cuff insertion and supraspinatus muscle, glenohumeral pain, and acromioclavicular pain elicited on motion. Dr. Katyal diagnosed adhesive capsulitis of the right shoulder and other sprain of the right shoulder and recommended corticosteroid injection and physical therapy.

An x-ray of the right shoulder dated November 6, 2017 revealed unchanged inferior subluxation of right humeral head, right humeral deformity, and osteoarthritic changes of right glenohumeral and acromioclavicular joints.

On November 6, 2017 Dr. Jeffrey R. Giuliani, a Board-certified orthopedist, treated appellant for secondary osteoarthritis of the right shoulder, spondylolisthesis of the lumbar region, and adhesive capsulitis of the right shoulder. He treated appellant in September 2016 for similar complaints following a fall in April 2016. Dr. Giuliani noted appellant's history was significant for lumbar fusion. He noted findings of significant atrophy of the right deltoid and rotator cuff muscles, diffuse tenderness of the posterior joint line, supraspinatous, lateral pectoral muscle and biceps tendon, limited range of motion, and positive impingement sign. A magnetic resonance imaging (MRI) scan of the right shoulder revealed diffuse labral tearing, severe tendinosis of supraspinatous, joint effusion, and degeneration at the glenohumeral joint. Dr. Giuliani opined that appellant had worsening right shoulder pain, stiffness, decreased range of motion and strength, which suggested progression of adhesive capsulitis and osteoarthritis of the right shoulder. He performed a right shoulder subacromial injection.

Dr. David E. Reece, a Board-certified physiatrist, treated appellant on November 20, 2017 for chronic low back pain. Appellant's history was significant for L5-S1 fusion in 2010. Appellant reported that the fusion was performed at the wrong level and was supposed to be done at L3-4. Dr. Reece noted tenderness on palpation of the thoracolumbar spine, limited range of motion, muscle spasms, and tenderness on palpation of the sacroiliac joint. He diagnosed postlaminectomy syndrome. Dr. Reece noted that appellant had chronic axial low back pain refractory to L5-S1 fusion in 2010 which was reportedly performed at the wrong level as there was L3-4 spondylolisthesis on imaging.

An x-ray of the lumbar spine dated December 1, 2017 revealed spinal fixation hardware at L5-S1 levels, the pedicle screws were not anchored to spinal rods, subtle degenerative retrolisthesis of L1 and L2, grade 1 anterior listhesis of L4, L5, near complete loss of intervertebral disc space throughout the thoracolumbar spine, and multilevel facet joint degeneration.

In an attending physician's report (Form CA-20) dated December 7, 2017, Dr. Katyal noted appellant fell when a chair rolled out from beneath her. She diagnosed aggravation of chronic axial low back pain, lumbago, right shoulder trochanteric bursitis, and worsening of low back pain. Dr. Katyal noted a history significant for chronic lumbago and status post spinal fusion at L4-5. She noted with a check mark "yes" that her surgical spine screws moved due to her fall causing an aggravation of her pain and worsening low back pain.

OWCP also received physical therapy treatment records covering the period April 19, 2016 to December 5, 2017.

By decision dated December 22, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the injury or events occurred as alleged. It noted that she neglected to answer eight of the nine questions on the November 17, 2017 factual development questionnaire.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical 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 upon a traumatic injury or an occupational disease.[6]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[7] Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that

[3] *Supra* note 2.

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

allegedly occurred.[8] The second component is whether the employment incident caused a personal injury.[9]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[10] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[11]

ANALYSIS

OWCP denied appellant's claim finding that she failed to establish that the claimed work incident of April 7, 2016 occurred as alleged. In the present case, the evidence of record supports that on April 7, 2016 a chair slid out from underneath appellant and she fell to the floor. On her Form CA-1, appellant indicated that she had been at the front desk assisting a patient when her office telephone rang. She then entered her office to answer the telephone and as she tried to sit, the chair rolled away. Appellant's buttocks hit the floor, and she reportedly injured her right shoulder as she tried to hold onto a second chair. There is no dispute that appellant was actually doing the job of a radiology technology supervisor on April 7, 2016 when she alleges an injury. Specifically, appellant's supervisor, B.F., noted on the Form CA-1 that appellant was injured while in the performance of duty and that his knowledge of the facts about the injury were consistent with the employee's statement.[12]

Additionally, the history of the work incident was confirmed by contemporaneous medical reports. Appellant sought medical treatment on April 11, 2016 and provided her health care providers with a consistent history of injury.[13] On April 11, 2016 Dr. Katyal treated appellant for right arm and lower back pain from a work-related injury. Appellant reported that on April 7, 2016, while working as a supervisor for radiology, she attempted to sit on a chair which slipped out from beneath her causing her to fall on her tail bone and injure her right shoulder and lumbar spine. Her diagnoses included lumbar and right shoulder sprains and unspecified inflammatory

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *R.T.*, Docket No. 08-0408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[11] *Betty J. Smith*, 54 ECAB 174 (2002).

[12] *See Allen C. Hundley*, 53 ECAB 551 (2002) (where the Board found that an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence).

[13] *See L.S.*, Docket No. 13-1742 (issued August 7, 2014); *M.H.*, 59 ECAB 461 (2008) (where the Board found that appellant's allegations were not refuted by strong or persuasive evidence and that there are no inconsistencies sufficient to cast serious doubt on her version of the employment incident).

spondylopathy of the sacral and sacrococcygeal region. Likewise, in an attending physician's report (Form CA-20) dated December 7, 2017, Dr. Katyal noted that on April 7, 2016 appellant was attempting to sit on a chair and the chair moved and she fell on the floor causing injury to her lower back and right shoulder. The Board finds that the evidence is undisputed that on April 7, 2016, while working as a radiology supervisor, appellant attempted to sit on a chair, but the chair slid out from underneath her and she fell to the floor. Additionally, the contemporaneous medical evidence included a diagnosis of lumbar and right shoulder sprains, which is sufficient to establish the medical component of fact of injury.[14] Accordingly, the Board finds that appellant established that the April 7, 2016 incident occurred at the time, place, and in the manner alleged.

OWCP never fully addressed the issue of whether the medical evidence established that an injury occurred causally related to this employment incident. The Board will remand the case to OWCP for review of the medical evidence.[15] Following this and other such further development, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has established that the April 7, 2016 incident occurred as alleged. The Board further finds, however, that the case is not in posture for decision with regard to causal relationship.

[14] *Id.*; *see Deborah L. Beatty*, 54 ECAB 340, 341 (2003).

[15] *David P. Sawchuk*, 57 ECAB 316 (2006).

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: March 27, 2019
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