

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

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K.R., Appellant)	
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and)	
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DEPARTMENT OF VETERANS AFFAIRS,)	Docket No. 19-1452
LOUIS STOKES CLEVELAND VETERANS)	Issued: June 29, 2020
AFFAIRS MEDICAL CENTER, Cleveland, OH,)	
Employer)	
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Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 25, 2019 appellant, through counsel, filed a timely appeal from a June 3, 2019 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 this 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 a back injury causally related to the accepted July 21, 2018 employment incident.

FACTUAL HISTORY

On September 18, 2018 appellant, then a 55-year-old licensed practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on July 21, 2018 she injured her low back when she fell out of her chair while in the performance of duty. She did not stop work.

In a development letter dated September 28, 2018, OWCP informed appellant that the evidence was currently insufficient to support her claim, noting that she had not submitted any medical evidence. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received a report dated August 13, 2018 from an unidentified health care provider, who treated appellant for leg/thigh symptoms, insomnia, and acute pain. The health care provider prescribed pain medicine and referred her for physical therapy.

In an August 15, 2018 visit summary report, Dr. Andre Cassell, a Board-certified psychiatrist, noted that he had treated appellant for a lumbar strain and radicular pain of the left lower extremity. He continued pain medication and recommended physical therapy and that appellant obtain a magnetic resonance imaging (MRI) scan of the lumbar spine. In an after visit summary dated September 5, 2018, Dr. Cassell evaluated appellant for left flank pain, degenerative arthritis of the lumbar spine, acute bilateral low back pain with left-sided sciatica, chronic pain of the left knee, lumbar nerve root disorder, and headache due to trauma. He prescribed medications for pain and headaches and recommended a lumbar injection.

On September 18, 2018 Dr. Jeffrey C. Kirschman, Board-certified in family practice, evaluated appellant at the employing establishment's clinic. He indicated that she had fallen backward from a chair on July 21, 2018, hitting a desk with her neck and low back and tangling her left leg in the chair. Appellant's pain had increased on August 9, 2018. Dr. Kirschman noted that she had a history of problems with her low back, but was performing full duty at the time of the incident. He advised that an MRI scan demonstrated an L3-4 left foraminal disc extrusion impinging on the left L3 nerve root. Dr. Kirschman diagnosed a lower back and pelvis contusion, a contusion of an unspecified part of the neck, lumbar intervertebral disc disorders with radiculopathy, and a strain of the left hip. He asserted that the condition was "work-related per history."

In a September 26, 2018 note, Dr. Cassell advised that appellant would be off work from September 26 to October 26, 2018.

In an October 11, 2018 statement, appellant related that on July 21, 2018 she had stepped onto a chair to get a flashlight before making her rounds when she fell backward onto a desk. She showed the night nurse manager her bruises, but did not report the incident because she did not

believe that it was serious. Appellant sought treatment from her primary care physician on July 31, 2018 and at the emergency room on August 10, 2018. She continued home treatments, but the pain progressed and she developed left leg numbness. Appellant advised that she was in a motor vehicle accident in 2016, but that her injuries had resolved.

In a narrative report dated October 24, 2018, Dr. Cassell indicated that he had initially evaluated appellant on August 15, 2018 for back pain that had begun on July 21, 2018 after a fall at work. He advised that she had a history of back pain from a prior June 26, 2018 accident. Dr. Cassell reviewed the result so diagnostic testing, including the MRI scan showing a left foraminal disc extrusion at L3-4 impinging upon the left L3 nerve. He related, "It is likely that the high energy trauma from [appellant's] fall backwards and subsequent contusion 'may have' caused [or] precipitated an event that caused or aggravated a preexisting extruded disc in the lumbar spine. The extruded disc with compression of part of the dorsal root ganglion could be causing [appellant's] symptoms, including weakness, loss of sensation, and difficult with ambulation."

By decision dated October 31, 2018, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that the medical condition was causally related to the accepted employment incident.

Subsequently, OWCP received an October 24, 2018 report from Dr. Jonathan E. Belding, a Board-certified orthopedic surgeon. Dr. Belding evaluated appellant for pain radiating into the left lower extremity. He recommended a knee injection to determine whether the pain was from knee arthritis or stemming from her back. Dr. Belding diagnosed acute bilateral low back pain with left sciatica and lumbar facet joint pain.

On November 8, 2018 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

In a progress report dated November 22, 2018, Dr. Cassell discussed appellant's complaints of low back pain radiating into the left leg. He noted that her pain improved with injections, but had returned after physical therapy. Dr. Cassell diagnosed lumbar radiculopathy due to disc disease.

In a request for medical documentation form dated December 24, 2018, Dr. Cassell noted that appellant was unable to bend, lift, twist, carry objects, or walk for prolonged distances. He indicated that the MRI scan demonstrated an extruded disc at L3-4 on which was causing pain and weakness in the left leg. Dr. Cassell opined that appellant was moderately-to-severely impaired and that it was unclear how long she would be off work due to her injury. He recommended physical therapy and interventional spinal procedures.

At the telephonic hearing, held on March 18, 2019, appellant described her employment history and the treatment received. Counsel advised that he was seeking a supplemental report from Dr. Cassell. No further evidence was received.

Thereafter, OWCP received an MRI scan of the lumbar spine dated May 15, 2017 which revealed mild multilevel degenerative facet arthrosis. An August 30, 2018 MRI scan of the lumbar spine revealed a left foraminal disc extrusion at L3-4 with impingement upon the left L3 nerve root.

By decision dated June 3, 2019, an OWCP hearing representative affirmed the October 31, 2018 decision.

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 and that the claim was filed within the applicable time limitation period of FECA,⁴ 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

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, 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.⁸

Rationalized medical opinion evidence is required to establish causal relationship. 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.⁹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that a disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰

³ *Id.*

⁴ *See R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *Y.K.*, Docket No. 18-0806 (issued December 19, 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 *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *D.C.*, Docket No. 18-1664 (issued April 1, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

¹⁰ *D.H.*, Docket No. 18-1410 (issued March 21, 2019).

Pursuant to OWCP's procedures, no development of a claim is necessary where the condition reported is a minor one which can be identified on visual inspection by a lay person (e.g., burn, laceration, insect sting or animal bite).¹¹ No medical report is required to establish a minor condition such as a laceration.¹²

ANALYSIS

The Board finds that appellant has met her burden of proof to establish back contusions causally related to the accepted July 21, 2018 employment incident. The Board further finds, however, that appellant has not established that her additional claimed conditions were causally related to the accepted July 21, 2018 employment incident.

As a result of the accepted July 21, 2018 employment incident, appellant was treated by Drs. Cassell and Kirschman. Both physicians described appellant's fall backwards from her chair and striking her back on that date while in the performance of duty, noted back pain, and diagnosed back contusions on physical examination. Both Drs. Cassell and Kirschman concluded that these contusions resulted from the July 21, 2018 employment incident.

The Board finds that the history of the accepted July 21, 2018 employment incident reported by Drs. Cassell and Kirschman was consistent with appellant's account, and their respective diagnosis of back contusions was visible and consistent with the mechanism of injury. As such, the Board finds that this evidence is sufficient to establish that appellant sustained back contusions causally related to the accepted February 21, 2019 employment incident.¹³ Upon return of the case record OWCP shall make payment and/or reimbursement of medical expenses and wage-loss compensation for disability, if any, with regard to the accepted back contusions.

The Board further finds, however, that the evidence of record is insufficient to establish that appellant's additionally claimed back conditions were causally related to the accepted July 21, 2018 employment incident.

On October 24, 2018 Dr. Cassell discussed appellant's history of back pain beginning on July 21, 2018 after a fall at work. He noted that she had a prior injury to her back. Dr. Cassell opined that appellant's fall and contusion "may have" caused or aggravated a preexisting extruded disc due to impact from her backward fall. He indicated that the compressing of the dorsal root from the extruded disc could result in her symptoms of reduced sensation, difficulty walking, and weakness. Dr. Cassell's finding that it was "likely" that appellant's backward fall caused or aggravated the extruded lumbar disc is couched in speculative terms. The Board has held that,

¹¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011).

¹² *Id.*, see *I.H.*, Docket No. 19-1678 (issued April 21, 2020) (the Board accepted abrasions as causally related to the accepted employment incident).

¹³ *Supra* notes 10 and 11.

medical opinions that are speculative or equivocal are of diminished probative value and, thus, this report is insufficient to meet her burden of proof to establish her claim.¹⁴

In a report dated September 18, 2018, Dr. Kirschman discussed appellant's history of falling backward off a chair on July 21, 2017 striking her neck and low back on a desk. He diagnosed a lower back and pelvis contusion, a contusion of an unspecified part of the neck, lumbar intervertebral disc disorders with radiculopathy, and a strain of the left hip. Dr. Kirschman indicated that appellant's condition was related to her employment by history. While he found that her condition was related to the incident by history, he failed to make an independent finding regarding causation.¹⁵ Without providing an independent opinion explaining how physiologically the movements involved in the accepted employment incident caused or contributed to the diagnosed condition, his opinion is of little probative value.¹⁶

The remaining medical evidence fails to address causal relationship. In an August 15, 2018 visit summary report, Dr. Cassell noted treating appellant for a lumbar strain and radicular pain of the left lower extremity. In the September 5, 2018 after visit summary, he evaluated appellant for left flank pain, degenerative arthritis of the lumbar spine, acute bilateral low back pain with left-sided sciatica, chronic pain of the left knee, lumbar nerve root disorder, and headache due to trauma. On September 26, 2018 Dr. Cassell advised that appellant should not work from September 26 to October 26, 2018. On October 24, 2018 Dr. Belding diagnosed acute bilateral low back pain with left sciatica and lumbar facet joint pain. In a November 22, 2018 progress report, Dr. Cassell diagnosed lumbar radiculopathy due to disc disease. In a December 24, 2018 form report, he found that appellant had an extruded L3-4 disc by MRI scan causing left leg pain and weakness. Dr. Cassell determined that she had a moderate-to-severe impairment. Although these physicians diagnosed various back conditions, neither physician, however, addressed the cause of the diagnosed conditions or disability. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹⁷ As Drs. Cassell and Belding did not address the issue of causal relationship between the diagnosed back conditions and the accepted July 21, 2018 employment incident, their reports are of no probative value and are, therefore, insufficient to establish appellant's claim.

Appellant submitted MRI scans of the lumbar spine dated May 15, 2017 and August 30, 2018. The Board has explained that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁸

¹⁴ *V.W.*, Docket No. 19-1537 (issued May 13, 2020); *K.M.*, Docket No. 19-1483 (issued February 6, 2020).

¹⁵ *T.S.*, Docket No. 18-1501 (issued March 4, 2019).

¹⁶ *Id.*; *see also A.B.*, Docket No. 18-0577 (issued October 10, 2018).

¹⁷ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁸ *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

As appellant has not submitted rationalized medical evidence establishing a causal relationship between her additional claimed back conditions and the accepted July 21, 2018 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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 met her burden of proof to establish back contusions causally related to the accepted July 21, 2018 employment incident. The Board further finds, however, that appellant has not established additional claimed back conditions causally related to the accepted February 21, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 3, 2019 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: June 29, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board