

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

S.W., Appellant)
and) Docket No. 19-1579
SOCIAL SECURITY ADMINISTRATON, NEW) Issued: October 9, 2020
YORK REGION, New York, NY, Employer)

)

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

Case Submitted on the Record¹

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On July 18, 2019 appellant filed a timely appeal from a May 6, 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.³

¹ Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated October 5, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-1579 (issued October 5, 2020). The Board's *Rules of Procedure* provide that an appeal in which a request for oral argument is denied by the Board will proceed to a decision based on the case record and the pleadings submitted. 20 C.F.R. § 501.5(b).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the May 6, 2019 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish neck, shoulder, or back conditions causally related to the accepted February 25, 2019 employment incident.

FACTUAL HISTORY

On March 11, 2019 appellant, then a 51-year-old analyst, filed a traumatic injury claim (Form CA-1) alleging that on February 25, 2019 she injured her neck, shoulder, and back when an elevator she was riding suddenly dropped from the 41st floor to the 38th floor while in the performance of duty. She stopped work on February 26, 2019.

Dr. Jonathan Gordon, a Board-certified orthopedist, treated appellant on February 26, 2019 for neck and left shoulder pain and noted that she was disabled from work until March 6, 2019. He treated appellant in follow up on March 13, 2019 for neck and left shoulder pain which began after riding an elevator on February 25, 2019 which suddenly dropped several floors. Appellant reported a pop in her neck, severe pain, numbness, and weakness radiating to both shoulders. Dr. Gordon again noted that she was totally disabled from work.

On March 5, 2019 Dr. Saad Chaudhary, a Board-certified orthopedist, treated appellant for neck pain radiating into her left shoulder, and numbness and tingling in both hands. She reported being involved in a work-related elevator accident on February 25, 2019 when an elevator dropped a couple of floors and jolted her around. Appellant noted similar neck pain in 2016, but her symptoms resolved with physical therapy. Dr. Chaudhary reviewed a 2016 magnetic resonance imaging (MRI) scan of the cervical spine which was consistent with a large left-sided C6-7 disc herniation and significant left foraminal stenosis. He diagnosed traumatic history of neck pain and bilateral hand numbness. In another note dated March 5, 2019, Dr. Chaudhary reported treatment of appellant for a neck injury and bilateral hand numbness. He released her to work with restrictions.

In a development letter dated March 29, 2019, OWCP acknowledged receipt of appellant's claim and informed her that additional evidence was needed to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received additional evidence. Dr. Chaudhary, in reports dated November 10 and December 6, 2016, noted that he treated her for neck pain and left upper extremity paresthesias which began without a specific triggering event. He diagnosed neck pain, periscapular pain, and paresthesias, and recommended additional physical therapy.

The employing establishment submitted an elevator repair log from the General Services Administration which reported an elevator malfunction on February 25, 2019 at elevator 5. The tenant reported going from the 41st to the 40th floor when the elevator shook and dropped to the 38th floor.

On February 26, 2019 Dr. Gordon reevaluated appellant for neck and bilateral shoulder pain radiating to her left arm. Appellant reported that her neck "popped" after riding an elevator that dropped from the 41st floor to the 38th floor. Dr. Gordon diagnosed cervical disc syndrome

and recommended steroids, anti-inflammatories, and surgery. He treated appellant again on April 2, 2019 and appellant reported no improvement in her condition, but increased pain and tenderness in her neck with radiation and radiculopathy down both arms. Dr. Gordon diagnosed cervical disc herniation and cervical disc syndrome and recommended an updated MRI scan. In an April 2, 2019 injury report/work status form, he noted that appellant had pain and weakness in the neck and bilateral shoulders which began after the elevator incident. Dr. Gordon advised that appellant was totally disabled from work. On April 15, 2019 he treated appellant in follow up for neck and bilateral shoulder pain and checked a box marked "Yes" that the incident described by appellant was the competent medical cause for her injury/illness. Dr. Gordon returned appellant to work with restrictions.

An April 6, 2019 MRI scan of the cervical spine revealed disc degeneration, cervical spondylosis, and mild canal stenosis at C6-7.

In response to OWCP's development letter, appellant described two incidents at work when an elevator she was riding malfunctioned. She reported that on February 13, 2019 she was leaving the office from the 40th floor on elevator 6 when the elevator suddenly dropped approximately 10 floors. Appellant noted that the sudden movement jerked her around. The second incident occurred on February 25, 2019 when she was returning from a work event on elevator 5 when the elevator dropped to the 38th floor and she heard a popping sound in her neck. Appellant returned to work on April 16, 2019, but still experienced discomfort and weakness of both sides of her neck and her shoulders.

On April 11, 2019 Dr. Chaudhary treated appellant for persistent neck pain, periscapular pain, upper extremity tingling, bilateral hand numbness, and radiculopathy. He recommended physical therapy and work restrictions.

In an April 15, 2019 report, Dr. Gordon continued to note appellant's complaints of bilateral shoulder pain, numbness radiating down to her bilateral hands and weakness of her legs that she attributed to a workers compensation injury. He diagnosed cervical disc herniation. Dr. Gordon reviewed the recent MRI scan of the cervical spine which confirmed canal stenosis at C6-7 with disc degeneration and cervical spondylosis. He recommended physical therapy and advised that she was totally disabled from work.

By decision dated May 6, 2019, OWCP denied appellant's traumatic injury claim finding that the medical evidence submitted was insufficient to establish causal relationship between her diagnosed condition and the accepted February 25, 2019 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 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

⁴ *Id.*

limitation of FECA,⁵ 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.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁸

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.¹⁰

In a case in which a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish neck, shoulder, or back conditions related to the accepted February 25, 2019 employment incident.

⁵ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Elyett*, 41 ECAB 992 (1990).

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013). See *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

In a report dated March 5, 2019, Dr. Chaudhary diagnosed traumatic history of neck pain and bilateral hand numbness which occurred after an elevator appellant was riding at work on February 25, 2019 dropped a couple of floors and jolted her around. Similarly, on February 26 and March 13, 2019, Dr. Gordon diagnosed cervical disc syndrome which appellant attributed to riding an elevator that dropped from the 41st floor to the 38th floor. None of these reports provided an opinion on the issue of causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹² These reports, therefore, are insufficient to establish appellant's claim. Other reports from Dr. Chaudhary dated November 10 and December 6, 2016 are of no probative value in establishing the claimed aggravation of her cervical condition since they predate the time of the claimed conditions of February 2019.

In reports dated March 5 and April 11, 2019, Dr. Chaudhary treated appellant for persistent neck pain, periscapular pain, upper extremity tingling, bilateral hand numbness, and radiculopathy. He released her to work with restrictions. Similarly, on April 2 and 15, 2019, Dr. Gordon treated appellant for persistent pain and tenderness in her neck with radiation and radiculopathy down both arms and diagnosed cervical disc herniation, cervical disc syndrome, canal stenosis at C6-7, and cervical spondylosis. However, these reports also fail to provide an opinion on the issue of causal relationship and are therefore insufficient to establish appellant's claim.¹³

In another report dated April 15, 2019, Dr. Gordon treated appellant for neck and bilateral shoulder pain. He checked a box marked "Yes" indicating that the incident described by appellant was the competent medical cause for her injury/illness. The Board has held, however, that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, is of diminished probative value and insufficient to establish causal relationship.¹⁴

Appellant submitted a cervical spine MRI scan. The Board has held that diagnostic studies, standing alone, lack probative value as they do not provide an opinion on the issue of causal relationship between the accepted employment incident and a claimant's diagnosed conditions.¹⁵ This evidence is therefore insufficient to establish appellant's claim.

As the medical evidence of record does not contain rationalized medical evidence establishing causal relationship between appellant's diagnosed conditions and the accepted February 25, 2019 employment incident, the Board finds that appellant has not met her burden of proof.

On appeal appellant argues that the employing establishment supplied incorrect information and medical reports submitted explain concerns regarding elevator safety. However, because the issue of causal relationship must be established by rationalized medical opinion evidence, the inaccuracy of the information submitted by the employing establishment is

¹² See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *Id.*

¹⁴ See *K.R.*, Docket No. 19-0375 (issued July 3, 2019); *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹⁵ See *I.C.*, Docket No. 19-0804 (issued August 23, 2019).

irrelevant.¹⁶ Furthermore, as explained above, the available evidence of record lacks adequate medical rationale on causal relationship and are insufficient to meet appellant's burden of proof to establish the 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 not met her burden of proof to establish neck, shoulder, or back conditions causally related to a February 25, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 6, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 9, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ *Supra* note 9.