United States Department of Labor
Employees' Compensation Appeals Board

V.F., Appellant	)	
and	)	**Docket No. 12-564**
	)	**Issued: July 23, 2012**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Iron Mountain, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 17, 2012 appellant filed a timely appeal from a November 30, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim. 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.

ISSUE

The issue is whether appellant met her burden of proof to establish that she developed a back condition causally related to factors of her federal employment.

FACTUAL HISTORY

On August 24, 2011 appellant, then a 41-year-old nursing assistant, filed an occupational disease claim (Form CA-2) alleging that she developed annular tears and small disc protrusions

[1] 5 U.S.C. § 8101 *et seq.*

as a result of repeatedly maneuvering residents and rolling them on their sides. She stated that she first became aware of her condition on August 2, 2011 and of its relationship to her employment on August 10, 2011 when she experienced electrical-type pain and numbness with tingling to her right leg. Appellant stopped work on August 9, 2011 and notified her supervisor on August 24, 2011. Her supervisor noted that appellant did not always utilize the safe-patient handling equipment.

By letter dated September 16, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. It requested that she provide additional factual and medical evidence within 30 days.

In an August 10, 2011 emergency room report, Dr. Charles Papp, a Board-certified surgeon, reported that appellant complained of low back pain and numbness in her right leg which had been ongoing for about one to two years. Appellant reported that she felt electric shocks radiating to her leg and denied any recent falls or injuries. Dr. Papp noted that she worked as a nursing assistant which entailed a lot of lifting, twisting and bending. He examined appellant and diagnosed lumbar strain, noting that she could potentially have a pinched nerve in her right leg. Dr. Papp signed a disability slip for back pain dated August 10, 2011.

In prescription notes dated August 12 to 23, 2011, Dr. Paul N. Hayes, Board-certified in family medicine, diagnosed annular tears and small disc protrusions and restricted appellant to light-duty work with no lifting greater than 15 pounds.

In an August 18, 2011 magnetic resonance imaging (MRI) scan of the lumbar spine, Dr. Louis J. Mautone, a doctor of osteopathic medicine, reported that appellant's lumbar spine showed annular tears and small disc protrusions at L4-5 and L5-S1.

In medical reports dated August 24 to September 22, 2011, Dr. Vijay Singh, Board-certified in family medicine, reported that appellant complained of constant burning, stabbing, aching and throbbing in her lower back, shock-like sensations in her whole body and aching in her right leg. He noted that she worked as a nurses' aide and that the work was taking a toll on her back. Dr. Singh stated that appellant's lower back pain began a few months ago at work which led her to seek emergency treatment on August 10, 2011. Upon physical examination and review of appellant's diagnostic tests, he diagnosed lumbar spondylosis with lumbalgia, right-sided sacroilitis with S1 joint dysfunction and arthralgia and right lower extremity pain. Appellant underwent bilateral facet joint nerve blocks at L4-5 and L5-S1 on August 25, 2011. In an August 31, 2011 post procedure evaluation, Dr. Singh diagnosed lumbar spondylosis with lumbalgia and persistent left-sided radiculitis with L4-5 and L5-S1 disc displacements. Appellant was restricted from working until September 9, 2011. On September 22, 2011 she underwent right-sided L4 and L5 transforaminal epidural injections.

In a September 16, 2011 medical report, Dr. Max E. Ots, a Board-certified neurological surgeon, reported that appellant developed back pain and occasional numbness in her right leg about a year ago. Appellant stated that she failed to seek prior treatment because her symptoms were not severe. Approximately two months ago at work, she complained of increased pain in her back with intermittent numbness in the right leg which became worse with her work activities as a nurses' aide. Upon physical examination and review of appellant's lumbar MRI

scan, Dr. Ots diagnosed low back pain and numbness and pain in the right leg symptomatic from a slight disc bulge at L4-5. He recommended physical therapy and restricted appellant from working for three weeks.

In physical therapy notes dated September 21 to October 13, 2011, Jodi Wadge, a physical therapist (PT), provided treatment for appellant's annular tear and bulging disc at L4-5.

In an October 14, 2011 medical report, Dr. Ots reported that, subsequent to injections and physical therapy, appellant's back pain had improved significantly. He noted that she continued to experience pain in the buttocks radiating down the right leg with numbness and that her right-sided radicular pain had not improved. Dr. Ots opined that appellant was symptomatic from the L5-S1 disc bulge and was a candidate for microdisectomy.

On October 15, 2011 appellant was placed on temporary light-duty assignment of her nursing services.

By decision dated November 30, 2011, OWCP denied appellant's claim finding that the medical evidence did not demonstrate that her back condition was causally related to the established work-related events.[2]

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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.[3] These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.[4]

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.[5] The second

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its November 30, 2011 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

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

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

To establish a 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 based on a complete factual and medical background, supporting such a 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. 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

OWCP accepted that appellant engaged in repetitive lifting, bending and twisting in her employment activities as a nursing assistant. It denied her claim, however, on the grounds that the evidence failed to establish a causal relationship between those activities and her back condition. The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a back injury causally related to factors of her employment as a nursing assistant.

In an August 10, 2011 emergency room report, Dr. Papp reported that appellant complained of low back pain and numbness in her right leg which had been ongoing for about one to two years. Appellant denied any recent falls or injuries. Dr. Papp noted that she worked as a nursing assistant which entailed a lot of lifting, twisting and bending. He diagnosed lumbar strain and noted that appellant could potentially have a pinched nerve in her right leg. While Dr. Papp provided a diagnosis, he failed to provide any opinion on the cause of her back injury. Though he noted that appellant's job entailed lifting, twisting and bending, he did not describe the duration or frequency of these activities or attribute her lumbar strain to her federal employment duties. Dr. Papp merely related appellant's summary of her employment duties. He did not explain how any of these specific activities would have caused her diagnosed condition.

[6] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

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

[8] *James Mack*, 43 ECAB 321 (1991).

The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9] Thus, Dr. Papp's report is insufficient to meet appellant's burden of proof.

In medical reports dated August 24 to September 22, 2011, Dr. Singh reported that appellant complained of constant burning, stabbing, aching and throbbing in her lower back, shock-like sensations in her whole body and aching in her right leg. He noted that she worked as a nurses' aide and that the work was taking a toll on her back. Dr. Singh stated that appellant's lower back pain began a few months ago at work which led her to seek emergency treatment on August 10, 2011. Upon physical examination and review of appellant's diagnostic tests, he diagnosed lumbar spondylosis with lumbalgia and persistent left-sided radiculitis with L4-5 and L5-S1 disc displacements. Appellant underwent bilateral facet joint nerve blocks at L4-5 and L5-S1 and right-sided L4 and L5 transforaminal epidural injections.

The Board finds that the opinion of Dr. Singh is not well rationalized. Dr. Singh diagnosed lumbar spondylosis with lumbalgia and left-sided radiculitis with L4-5 and L5-S1 disc displacements but failed to state any opinion on the cause of appellant's injury. He failed to adequately address her prior medical history, only noting that her back pain began a few months before. While Dr. Singh noted that appellant's job as a nursing assistant was taking a toll on her back, he did not attribute her condition to her employment duties and merely recounted her description of her injury. Further, he failed to describe her work duties, did not specify how long she worked as a nursing assistant, how many hours she lifted, bended and twisted in a day and the periods and the frequency of other physical movements and tasks. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[10] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.[11] Dr. Singh's reports do not meet that standard and are insufficient to meet appellant's burden of proof.

In medical reports dated September 16 and October 14, 2011, Dr. Ots reported that appellant developed back pain and occasional numbness in her right leg about a year ago. Approximately two months ago at work, appellant complained of increased pain in her back with intermittent numbness in the right leg which became worse with her work activities as a nurses' aide. Dr. Ots diagnosed annular tear at L4-5 and disc bulge at L5-S1. While he diagnosed appellant's back condition, he did not identify the cause of the problem and did not mention her employment activities. Dr. Ots failed to provide an adequate medical history, did not describe her work duties or failed to provide an opinion on the cause of her injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's

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

[10] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[11] *See Lee R. Haywood*, 48 ECAB 145 (1996).

condition is of limited probative value on the issue of causal relationship.[12] Without medical reasoning explaining how appellant's employment factors caused her back condition, Dr. Ots' reports are insufficient to meet appellant's burden of proof.[13]

The remaining medical evidence of record is also insufficient to establish that appellant developed a back condition causally related to factors of her federal employment. Dr. Hayes' prescription notes diagnosed appellant with annular tears and small disc protrusions, restricting her to light duty. Dr. Mautone's August 18, 2011 report diagnosed annular tears and small disc protrusions at L4-5 and L5-S1. While he diagnosed appellant's injury, the reports fail to address the causal relationship between her back condition and the accepted employment factors. Further, physical therapists are not physicians under FECA, therefore, the reports of PT Wadge do not constitute competent medical evidence in support of a claim.[14]

Evidence submitted by appellant after the final decision cannot be considered by the Board. As previously noted, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.[15] Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her back condition is causally related to factors of her federal employment as a nursing assistant.

[12] *Supra* note 9.

[13] *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

[14] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law; *see also Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Barbara J. Williams*, 40 ECAB 649 (1988).

[15] 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the November 30, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 23, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board