United States Department of Labor
Employees' Compensation Appeals Board

HAI FEN LIU, Appellant	)	
and	)	**Docket No. 05-978**
	)	**Issued: August 5, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Red Bank, NJ, Employer	)	

Appearances:
Hai Fen Liu, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On March 21, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated January 10, 2005 finding that she had not established an injury on October 2, 2004. Pursuant to 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 that she sustained an injury in the performance of duty on October 2, 2004.

FACTUAL HISTORY

On October 26, 2004 appellant, then a 49-year-old clerk, filed a traumatic injury claim stating that on October 2, 2004 while moving boxed mail she sustained a lumbar sprain and strain with severe pain and spasms extending to the right leg. The employing establishment questioned whether this represented a recurrence of a previous injury.

Accompanying the claim was a CA-16 form report[1] dated October 21, 2004 from Dr. Dilip M. Donde, an internist, who stated that he treated appellant for a lumbosacral strain and severe pain and spasm of a mid right disc sustained on October 2, 2004 at work. He indicated by checking a box "yes" that appellant's condition was causally related to employment and placed her on total disability from October 5, 2004 for two weeks, at which time she would be released to return to light duty. Dr. Donde added that appellant had a prior disc condition.

Appellant also submitted treatment records from Dr. Donde. On October 5, 2004 Dr. Donde stated that he treated appellant for low back pain that began on October 2, 2004 at work. Other treatment records noted appellant's continued symptoms of low back pain.

By letter dated November 18, 2004, the Office advised appellant that the information submitted in her claim for a traumatic injury on October 2, 2004 was not sufficient to support her claim. In particular, appellant was directed to provide a detailed narrative report from her physician that would include a history of injury and all prior industrial and nonindustrial injuries to her back; findings, symptoms, a firm diagnosis and test results that confirm the diagnoses; and treatment provided, prognosis and the period and extent of any disability, if any. The Office also required that appellant include her physician's opinion and explanation of why the diagnosed condition was caused or aggravated by her employment.

On December 13, 2004 appellant stated that she had had an August 13, 1997 claim with similar symptoms of back pain but not to the extent of the current condition. She also submitted reports from Dr. Lance A. Markbreiter, a Board-certified orthopedic surgeon, from August 25, 1997 to January 19, 1998 that referenced the August 13, 1997 back condition.

By decision dated January 10, 2005, the Office denied appellant's claim on the grounds that she did not establish fact of injury. The Office found that appellant had established the occurrence of the claimed October 2, 2004 employment incident but failed to establish a diagnosed condition resulting from the employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

[1] The employing establishment's portion of the form was only partially completed and not signed by an authorizing employing establishment official.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a "fact of injury" has been established. 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.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between the disability or the medical condition and employment.[7] To establish causal relationship, appellant must submit a physician's report that reviews and considers employment factors identified by appellant as causing the disability or medical condition as well as findings upon examination of appellant and medical history, state whether the employment injury caused or aggravated appellant's diagnosed condition or conditions and present medical rationale in support of his or her opinion.[8]

ANALYSIS

The evidence supports that the claimed incident, appellant's moving boxes on October 2, 2004, occurred. However, the medical evidence is insufficient to establish that this incident caused or aggravated an injury.

In his October 21, 2004 form report, Dr. Donde indicated by checking a box "yes" that appellant's lumbosacral strain was causally related to the October 2, 2004 incident. However, when a physician's opinion supporting causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish a causal relationship.[9] Dr. Donde did not provide any medical reasoning for his opinion on causal relationship. His October 5, 2004 treatment record notes seeing appellant for low back pain that began on October 2, 2004 at work. Dr. Donde did not specifically opine whether employment activity caused or aggravated a particular condition. For example, he did not explain how or why appellant's lifting at work caused or aggravated a diagnosed condition nor did he explain why any diagnosed condition would not attributable to any preexisting back conditions. The opinion of a physician supporting causal relationship must be based 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 nature of the relationship between the diagnosed condition and the established incident or factor of employment.[10] Other treatment records from Dr. Donde either predate the claimed injury, do not address the history of

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id.*

[7] *Donald W. Long*, 41 ECAB 142 (1989).

[8] *Id*.

[9] *Gary J. Watling*, 52 ECAB 278 (2000).

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

injury or provide no opinion on causal relationship. Dr. Markbreiter's reports provide some history regarding appellant's prior back condition but do not address the claimed work-related injury on October 2, 2004.

Although the Office advised appellant on November 18, 2004 regarding the type of medical evidence needed to establish her claim, appellant did not submit such evidence. Consequently, she failed to discharge his burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof that she sustained an injury in the performance of duty on October 2, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 10, 2005 is affirmed.

Issued: August 5, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board