

No. 09-2029422 appellant has an accepted claim for lumbar strain and herniated disc due to a November 14, 2002 work injury.

In a narrative statement, appellant advised that she started having pain in her right leg two weeks prior to January 20, 2005. She indicated that, on January 20, 2005, she awoke from a nap at 2:30 p.m. to get her daughter off the school bus and had trouble getting out of bed due to severe back pain. Appellant stated that, when her medicine did not relieve her pain, she sought medical attention at a local emergency room.

Appellant submitted claims for wage-loss compensation for the period March 10 to April 1, 2005. She submitted medical records and treatment notes from University Hospitals of Cleveland, Bedford Medical Center and Rockside Internal Medicine, dated from January 14 to April 8, 2005. A CA-17 duty status report dated January 14, 2005 noted a fall at work on November 14, 2002 and diagnosed a L5-S1 disc herniation and lumbar sprain. A January 24, 2005 registration at Bedford Medical Center noted leg pain and that a venous study was completed. A January 31, 2005 status report from Rockside Internal Medicine Clinic noted that appellant was seen for a work-related condition and was placed off work until February 17, 2005. The January 26, 2005 discharge instruction sheet from University Hospitals of Cleveland noted right leg pain. The record was also supplemented with a January 25, 2005 authorization for medical treatment signed by a nurse and a February 25, 2005 request for pain management consultation and follow-up.

In a letter dated April 15, 2005, the Office advised appellant that the evidence was insufficient to establish that she sustained an injury on January 20, 2005. The Office requested that she specify the events of January 20, 2005 believed to have caused her current condition and address whether the alleged injury occurred at home as the time given for the injury was 2:30 p.m. The Office advised appellant that it required a diagnosis of her condition and a comprehensive medical report from a physician which described the history of injury, and included an opinion supporting a causal relationship between any diagnosed condition and the January 20, 2005 work incident. The Office also provided the definition of a recurrence of disability and advised appellant that, if the January 20, 2005 injury occurred at home without any intervening factors, she could file a recurrence of disability claim under the November 14, 2002 injury claim, File No. 09-2029422.

In a May 25, 2005 response, appellant stated that she did not know why the pain in her back and right leg returned. She experienced numbness in her right leg at work weeks prior to the injury but was not aware of what it was or why it occurred. Appellant noted that she had a herniated disc due to the November 14, 2002 work injury and took medication to ease the pain. She submitted physical therapy prescriptions, requests for authorization for physical therapy and a September 16, 2003 physical therapy report. The record reflects that appellant submitted a CA-7 claim for wage-loss compensation for the period April 5 to May 25, 2005.

In medical reports dated January 14 to April 8, 2005, Dr. Scott L. Massien, a Board-certified internist, noted a history of a L5-S1 disc herniation and right-sided sciatica. He diagnosed a flare-up of an L5-S1 disc herniation and lumbar sprain with limited right sciatica. Dr. Massien continued appellant on limited duty with restrictions.

By decision dated June 2, 2005, the Office denied the claim, finding that appellant did not establish an injury on January 20, 2005 as alleged. The Office found that the factual and medical evidence failed to describe a clear mechanism of injury on January 20, 2005 to cause appellant's back complaints or to have caused or aggravated her preexisting herniated disc condition.

On June 16, 2005 appellant requested an oral hearing which was held on March 29, 2006. No new evidence was submitted.

By decision dated June 14, 2006, an Office hearing representative affirmed the June 2, 2005 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 filed within the applicable time limitation; that an injury was sustained while 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.² 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.³

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁴ 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.⁵

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ *Deborah L. Beatty*, 54 ECAB 340 (2003).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

In this case, appellant has not described any specific event or incident occurring on January 20, 2005 at work as a cause of her back symptoms. In a May 25, 2005 statement, appellant described experiencing right leg pain during a two-week period prior to January 20, 2005. The record reflects that she finished her work shift that morning at 1:30 a.m. and went home. Appellant stated that when she awoke from a nap at 2:30 p.m. she experienced severe back pain. While the record reflects that she has a preexisting back condition, appellant did not identify any factor of her work as a mail handler on January 20, 2005 as causing her condition. It is not established that a specific employment incident occurred during appellant's work shift on January 20, 2005.

Moreover, appellant did not submit medical evidence from a physician which addressed any incident on January 20, 2005 which caused or aggravated her preexisting herniated disc condition. Dr. Massien diagnosed a flare-up of an L5-S1 disc herniation and lumbar sprain with limited right sciatica. He continued appellant on limited duty with restrictions. However, Dr. Massien failed to note any history of injury on January 20, 2005 or identify any employment factors believed to have caused or contributed to appellant's condition.⁷ He failed to provide a rationalized opinion regarding the causal relationship between appellant's back condition and her work duties of January 20, 2005. A medical report that does not contain an accurate medical history or statement on causal relationship is of diminished probative value.⁸ Appellant also submitted notes and reports pertaining to physical therapy. These reports, however, do not constitute probative medical evidence as physical therapists are not physicians as defined under the Act.⁹ There is no medical evidence which provides a history of injury on January 20, 2005 or attributes the cause of appellant's back condition arising on January 20, 2005 to her employment duties on that date.

Appellant has failed to establish a specific incident which occurred on January 20, 2005. She has not submitted medical evidence supporting a causal relationship between any specific events on January 20, 2005 and her preexisting herniated disc condition. Appellant has failed to meet her burden of proof. Accordingly, the Board finds that the Office properly denied her claim for benefits under the Act.

⁶ *Solomon Polen*, 51 ECAB 341 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁸ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁹ The Act, at 5 U.S.C. § 8101(2), provides that medical opinion, in general, can only be given by a qualified physician. See *David P. Sawchuk*, 57 ECAB ___ (Docket No. 05-1635, issued January 13, 2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act); *Roy L. Humphrey*, 57 ECAB ___ (Docket No. 05-1928, issued November 23, 2005).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on January 20, 2005.

ORDER

IT IS HEREBY ORDERED THAT the June 14, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board