United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 06-2014**
	)	**Issued: January 23, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Kansas City, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 29, 2006 appellant filed an appeal from a June 15, 2006 decision of the Office of Workers' Compensation Programs' hearing representative, denying her claim for a traumatic injury. 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 sustained a traumatic injury on December 9, 2004 causally related to her federal employment.

FACTUAL HISTORY

On December 9, 2004 appellant, then a 39-year-old clerk, filed a claim alleging that she sustained an injury causally related to her federal employment. Appellant alleged that she injured her back and neck on December 9, 2004 while turning and loading mail onto a ledge. A supervisor verified that appellant had performed the duties for less than 45 minutes and that the mail weighed less than appellant's restriction of 17 pounds.

In a letter dated December 12, 2005, the Office informed appellant that she should submit evidence to establish that she experienced the incident as alleged and a physician's opinion as to how the injury resulted in a diagnosed condition.

On January 18, 2006 appellant submitted a handwritten narrative dated December 19, 2005, two magnetic resonance imaging (MRI) scan examination results dated June 26, 2002 and September 28, 2005 and physical therapy evaluations, progress reports and discharge summaries. The June 26, 2002 MRI scan noted "normal MRI [scan] of the spine." The September 28, 2005 MRI scan indicated a "minimal disc desiccation." In a letter dated October 19, 2005, Dr. Khanh Nguyen, Board-certified in internal medicine, discussed appellant's condition. He diagnosed "cervical syndrome" and stated that there was "tightness in paracervical musculature." Copies of Dr. Nguyen's handwritten treatment notes were included.

By decision dated January 23, 2006, the Office accepted that the December 9, 2004 incident occurred as alleged. It denied appellant's claim, finding that the medical evidence did not establish that appellant's back condition was related to the accepted incident.

On January 30, 2006 appellant requested reconsideration and provided a January 24, 2006 report from Dr. Nguyen. He stated that the diagnosis was cervical syndrome for appellant's neck injury. Dr. Nguyen also stated that the "[t]wisting of patient's body and neck both left to right and up and down continuously for over an hour probably caused the injury to the lower middle back and aggravated the original accepted injury."

By decision dated March 27, 2006, the Office found that the medical evidence was not sufficient to warrant modification of the January 23, 2006 decision.

On April 12, 2006 appellant requested reconsideration and submitted an April 6, 2006 report from Dr. Nyugen, who gave the diagnosis of cervical syndrome and stated that the prior neck injury was aggravated by the incident of December 9, 2004.

By decision dated June 15, 2006, the Office found that the April 6, 2006 medical report was insufficient to warrant modification of the March 27, 2006 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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.[2] These are the essential

[1] 5 U.S.C. §§ 8101-8193

[2] *Joe D. Cameron*, 41 ECAB 153(1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon 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. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury.[5] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[6]

ANALYSIS

Appellant alleged that she injured her back and neck on December 9, 2004 while turning and loading mail onto a ledge. The Office accepted that the incident occurred as alleged. The issue is whether her mail activities on that date caused or contributed to her claimed conditions.

To establish that the accepted incident caused an injury, appellant must submit medical evidence from her treating physician addressing causal relationship. The Office found that the medical reports failed to establish that a medical condition resulted from the accepted events. However, the Office incorrectly identified the injury in the claim on December 9, 2004 as solely a "lower middle back injury" as appellant described her condition on the form as "pain in my back shooting up the middle of my back to my neck, pain in low part of back." The Office's decisions focused on the lack of objective medical evidence to support a middle back condition rather than both the back and neck conditions. While there is some support for the back condition in the medical evidence there is no clear diagnosis or objective findings provided by the physician. Dr. Nguyen only describes "low back pain." A physician's diagnosis of pain does not constitute a basis for payment of compensation.[7]

The Board finds that there is medical evidence to support a claim for appellant's neck condition. Dr. Nguyen provided a diagnosis of cervical syndrome in his reports on October 19, 2005, January 24 and April 6, 2006. The two MRI scan reports demonstrate a change in appellant's condition. The examination done before the injury on June 26, 2002 found "normal MRI [scan] of the spine" and the one done after the injury on September 28, 2005 found

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Elaine Pendleton*, *supra* note 2.

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

[6] *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 3. Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

[7] *Robert Broome*, 55 ECAB 0493 (2004), *citing John L. Clark*, 32 ECAB 1618 (1981).

"minimal disc desiccation superiorly." In his October 19, 2005 report, Dr. Nguyen found "tightness in paracervical musculature." In both his January 24 and April 6, 2006 reports, Dr. Nguyen opined that the twisting of appellant's body and neck probably aggravated the original neck injury. Even with medical evidence of a neck condition, the case turns on whether the medical evidence is sufficient to demonstrate a causal relation between the injury and the neck condition.

The Board notes that Dr. Nguyen's reports are consistent in indicating that the employee sustained an employment-related condition, and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficiently rationalized to meet appellant's burden of proof to establish his claim, they raise an uncontroverted inference between appellant's claimed condition and the accepted employment factors and are sufficient to require the Office to further develop the medical evidence and case record.[8]

On remand the Office should prepare a statement of accepted facts and refer appellant, along with her medical records, for a second opinion examination, in order to obtain a rationalized opinion as to whether appellant's current condition is causally related to factors of her employment, either directly, or through aggravation, precipitation or acceleration.

CONCLUSION

The Board finds that the record does substantiate a diagnosis for appellant's cervical condition. The case will be remanded for further development of the medical evidence as to whether this condition was caused by the accepted employment incident, to be followed by an appropriate decision.

[8] *Virginia Richard*, 53 ECAB 430 (2002); *see also John J. Carlone*, *supra* note 5; *Robert A Redmond*, 40 ECAB 796, 801 (1989).

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Issued: January 23, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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