United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 08-432**
	)	**Issued: June 6, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Columbus, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 26, 2007 appellant, through her attorney, filed a timely appeal from April 11 and November 6, 2007 merit decisions of the Office of Workers' Compensation Programs finding that she did not establish a recurrence of a medical condition. 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 established that she sustained a recurrence of a medical condition on December 26, 2006 due to her February 20, 2003 employment injury.

FACTUAL HISTORY

On March 7, 2003 appellant, then a 34-year-old city carrier, filed a claim alleging that on February 20, 2003 she sustained an injury to her back and neck when she slipped and fell on ice. She stopped work following her injury and returned to her regular employment around May 20, 2003. The Office accepted the claim for cervical sprain.

Appellant filed a notice of recurrence of disability on July 18, 2004 causally related to her February 20, 2003 employment injury. She related that she awoke from sleep with pain and stiffness in the same area as her employment injury. By decision dated November 23, 2004, the Office found that she had not established an employment-related recurrence of disability on July 18, 2004.

In a report dated May 5, 2005, Dr. Mary Ann Wynd, Board-certified in family practice, noted that appellant had been released from treatment for her February 20, 2003 employment injury on September 7, 2004. She evaluated appellant on March 11, 2005 for shoulder and neck pain after she pulled down the door of her work vehicle.[1]

On January 10, 2007 appellant filed a notice of recurrence of a medical condition on December 26, 2006 due to her February 2003 work injury. She stopped work on December 26 and returned to work on December 27, 2006. Appellant related that she awoke with a stiff neck on December 26, 2006. She indicated that the pain was the same as she had previously experienced.

In a form report dated December 27, 2006, Dr. Alton J. Ball, Board-certified in preventative medicine, diagnosed an exacerbation of cervical radiculitis and checked "yes" that the condition was caused or aggravated by an employment activity. He found that appellant should remain off work the rest of the day for pain management.

On January 5, 2007 Dr. Wynd found right cervical and right trapezius tenderness and spasm on physical examination. She diagnosed cervical sprain and cervical radiculopathy with right shoulder pain. Dr. Wynd noted that appellant's claim was "currently in inactive status, but injured worker is appealing this at this time." She requested authorization for a magnetic resonance imaging (MRI) scan study when the claim was reactivated. In a form report of the same date, Dr. Wynd listed the history of injury as a fall on ice with "new right shoulder pain." She diagnosed cervical radiculopathy and checked "yes" that the condition was caused or aggravated by employment. Dr. Wynd completed a duty status report indicating that appellant could perform her usual employment.

On February 6, 2007 the Office requested that appellant submit a factual statement explaining why she believed that her condition was due to her employment injury and describing any new injuries. The Office also requested supporting medical evidence.

On February 27, 2007 Dr. Wynd discussed appellant's history of a February 20, 2003 employment injury. She noted that a March 28, 2003 MRI scan study of the cervical spine showed degeneration with right side nerve root encroachment at C4-5 and mild encroachment of the left nerve root at C5-6. An electromyogram performed on April 28, 2003 showed C5 or C6 right radiculopathy. Appellant also had right shoulder degenerative changes. She currently experienced "moderate to severe pain in the right side of her neck, right shoulder and mid upper arm," mild pain in the left shoulder and numbness and tingling of the right and left fingers.

[1] In a decision dated July 29, 2005, the Office denied appellant's claim that she sustained a traumatic injury to her right shoulder on March 11, 2005 under file number 092057949.

Dr. Wynd recommended a right shoulder MRI scan study to "differentiate between cervical radiculopathy and right shoulder pathology." She stated:

> "It is my medical opinion with reasonable medical probability that falling on the ice in February of 2003 did, in fact, aggravate her preexisting degenerative joint disease of the neck resulting in radiculopathy extending down the right upper extremity. As the MRI [scan] [study] requested of the right shoulder has not yet been performed, I am unable to give an opinion regarding pathology in the shoulder related to the fall in February 2003 since we do not have a definitive right shoulder diagnosis at this time.
>
> "The injured worker has requested that her claim be reopened so that she may receive appropriate medical treatment for the work[-]related injury with treating the current conditions of cervical sprain and cervical radiculopathy."

By decision dated April 11, 2007, the Office found that appellant had not established a recurrence of a medical condition due to her accepted employment injury. The Office noted that she had not provided the requested factual statement. The Office further determined that the medical evidence was insufficiently rationalized to show a recurrence of a medical condition.

Appellant requested an oral hearing. In a report dated July 27, 2007, Dr. Wynd noted that she experienced pain in her neck and right upper extremity subsequent to a fall on ice while at work on February 20, 2003. Dr. Wynd again discussed the results of the diagnostic studies and asserted:

> "It is my medical opinion that falling on the ice on February 20, 2003 did in fact aggravate her preexisting degenerative joint disease of the cervical spine which then resulted in C5 radiculopathy involving the right upper extremity. It is my medical opinion that these conditions should be allowed in this claim so that injured worker may receive appropriate medical treatment for her work[-]related injury."

At the hearing, held on September 20, 2007, appellant related that she missed around three or four months of work after her February 20, 2003 employment injury. She returned to her regular employment no later than May 20, 2003. Appellant experienced two or three flare ups of her condition from 2003 to 2006. The increased pain usually occurred after sleeping. Appellant sought treatment in December 2006 when she experienced pain after sleeping.[2] Her attorney contended that her claim should have been accepted for cervical radiculopathy rather than a cervical strain.

By decision dated November 6, 2007, an Office hearing representative affirmed the November 6, 2007 decision.

[2] Appellant related that she might have seen Dr. Wynd at that time for an injury which occurred when she pulled down the door of her vehicle.

LEGAL PRECEDENT

Section 10.5(y) of the Office's regulations provides in pertinent part:

> "Recurrence of medical condition means a documented need for further medical treatment after release from treatment of the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a 'need for further medical treatment after release from treatment' nor is an examination without treatment."[3]

The Office's procedure manual provides:

> "*After 90 days of Release from Medical Care* (Again, this should be based on the physician's statement or instruction to return PRN or computed by the [claims examiner] from the date of last examination.) The claimant is responsible for submitting an attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury."[4]

ANALYSIS

The Office accepted that appellant sustained cervical strain due to a February 20, 2003 work injury when she slipped and fell on ice. Appellant stopped work following her injury and returned to her regular employment no later than May 2003. She was released from medical treatment on September 7, 2004. Appellant alleged that she sustained a recurrence of her medical condition such that she required further medical treatment beginning December 26, 2006. She related that she experienced pain in the right neck and shoulder when she woke up from sleep. As appellant is more than 90 days of release from medical care, it is her responsibility to submit "an attending physician's report which contains a description of the objective findings and supports causal relationship between [appellant's] current condition and the previously accepted work injury."[5]

In a form report dated December 27, 2006, Dr. Ball diagnosed an exacerbation of cervical radiculitis. He checked "yes" that the condition was caused or aggravated by an employment activity and found that appellant should stay off work the remainder of the day. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[6]

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[3] 20 C.F.R. § 10.5(y).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (May 2003).

[5] *Id*.

[6] *Cecelia M. Corley*, 56 ECAB 662 (2005); *Deborah L. Beatty*, 54 ECAB 3234 (2003).

On January 5, 2007 Dr. Wynd diagnosed cervical sprain and cervical radiculopathy with right shoulder pain. She requested authorization for an MRI scan study when appellant's claim was reactivated. In a duty status report of the same date, Dr. Wynd opined that she could perform her usual employment. As she did not specifically address the cause of the diagnosed cervical sprain and cervical radiculopathy, her opinion is of little probative value.[7] In an accompanying form report of the same date, Dr. Wynd listed the history of injury as a fall on ice with "new right shoulder pain." She diagnosed cervical radiculopathy and checked "yes" that the condition was caused or aggravated by employment. Dr. Wynd, however, did not provide any rationale for this finding. Medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof.[8] The medical evidence must include rationale explaining how the physician reached the conclusion he or she is supporting.[9]

On February 27, 2007 Dr. Wynd reviewed the history of appellant's February 20, 2003 work injury and the findings on diagnostic studies. She had degeneration of the cervical spine and right shoulder. Dr. Wynd asserted that appellant's February 20, 2003 work injury "did, in fact, aggravate her preexisting degenerative joint disease of the neck resulting in radiculopathy extending down the right upper extremity." The Office, however, has not accepted an aggravation of cervical degenerative joint disease as employment related. Where appellant claims that, a condition not accepted or approved by the Office was due to her employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence.[10] Dr. Wynd did not provide any rationale for her opinion that the work injury aggravated a preexisting cervical condition. Medical conclusions unsupported by rationale are of little probative value.[11]

In a report dated July 27, 2007, Dr. Wynd noted that appellant experienced pain in her neck and right upper extremity subsequent to a fall on ice while at work on February 20, 2003. She opined that her work injury aggravated preexisting cervical degenerative joint disease which caused radiculopathy at C5. Dr. Wynd requested that the Office expand acceptance to include the diagnosed conditions. As noted, it is appellant's burden to submit rationalized medical evidence supporting that her aggravation of preexisting degenerative joint disease and resulting radiculopathy are employment related. Dr. Wynd did not explain how the fall three years earlier caused the diagnosed aggravation and radiculopathy; thus, her opinion is of little probative value.[12]

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[7] *Conard Hightower*, 54 ECAB 796 (2003) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[8] *Sedi L. Graham*, 57 ECAB 494 (2006).

[9] *Beverly A. Spencer*, 55 ECAB 501 (2004).

[10] *JaJa K. Asaramo*, 55 ECAB 200, 204 (2004).

[11] *Willa M. Frazier*, 55 ECAB 379 (2004); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[12] *See Cecelia M. Corley*, 56 ECAB 662 (2005) (a medical opinion not fortified by rationale is of diminished probative value).

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed condition and her employment.[13] She must submit a physician's report in which the physician reviews those factors of employment identified by her as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.[14] Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.

CONCLUSION

The Board finds that appellant has not established that she sustained a recurrence of a medical condition on December 25, 2006 due to her February 20, 2003 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 6 and April 11, 2007 are affirmed.

Issued: June 6, 2008
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

[13] *Robert Broome*, 55 ECAB 339 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[14] *See Robert Broome*, *supra* note 13.