United States Department of Labor
Employees' Compensation Appeals Board

A.G., Appellant	)	
and	)	**Docket No. 08-1393**
	)	**Issued: November 13, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Pinellas Park, FL, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 11, 2008 appellant filed an appeal from decisions of the Office of Workers' Compensation Programs' dated April 30, 2007 and March 17, 2008. 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 established that she had any employment-related disability beginning December 5, 2005 causally related to her employment injuries.

FACTUAL HISTORY

On October 1, 2004 appellant, then a 37-year-old letter carrier, filed a Form CA-1, traumatic injury claim, alleging that she injured both knees and her left ankle and wrist that day when she fell on uneven concrete returning to her postal vehicle. She stopped work that day. A Dr. Eric Buette diagnosed a laceration and contusion of the right knee and strain/sprains of the left ankle, wrist and knee. In an October 5, 2004 report, Dr. George H. Canizares, a Board-certified orthopedic surgeon, noted a history that appellant tripped on uneven cement, twisting

her left ankle, falling on her left wrist and then landing on her right knee while twisting both knees. He performed physical examination and reported that x-rays of the knees and left ankle were negative. Dr. Canizares diagnosed bilateral knee medial collateral ligament sprains, left ankle sprain and left wrist sprain. On November 4, 2004 he reported that appellant was better and working light duty and, on December 17, 2004, he noted minimal findings on examination of the right knee and ankle. Dr. Canizares advised that she had no disability and could return to full duty without restriction. On January 19, 2005 the Office accepted that appellant sustained an open wound and contusion to the right knee and strains to the left ankle, left knee and left wrist.

On February 14, 2006 appellant filed a Form CA-7, claim for compensation, for the period commencing December 5, 2005. By letter dated March 22, 2006, the Office informed appellant of the evidence needed to support her claim.

Appellant submitted a July 21, 2005 magnetic resonance imaging (MRI) scan of the cervical spine that demonstrated a disc protrusion at C5-6 with mild neural foraminal narrowing and multilevel facet arthritic changes. On December 2, 2005 Dr. Harish J. Patel, a neurologist, noted appellant's complaints of headaches, visual aura and neck pain. He noted that she fell at work on October 1, 2004 injuring her neck, back and knees. Dr. Patel performed physical examination and diagnosed headaches and neck pain with left hand numbness and advised her not to drive due to medications. A December 7, 2005 MRI scan of the cervical spine demonstrated broad-based disc bulges/spurs with mild bilateral neural foraminal encroachment and mild central canal stenosis at C3-4, C4-5 and C5-6. MRI scans on December 7, 2005 of the brain and thoracic spine were read as normal. In a January 5, 2006 report, Dr. Patel diagnosed lumbosacral radiculopathy with pain. A January 6, 2006 MRI scan of the lumbar spine was remarkable for minimal disc herniation at L5-S1 with disc desiccation and minimal spinal canal stenosis. On January 26, 2006 Dr. Patel advised that appellant had been unable to work since December 2005 and remained totally disabled. On February 3, 2006 he diagnosed headaches, cervical radiculopathy with numbness in the hands, visual aura, lumbosacral radiculopathy with pain and spasm. Dr. Patel checked a box "yes," indicating that the condition was employment related, stating, "due to this fall patient got the pain from the traumas to her neck and back. This caused the problems with the upper and lower extremities." Dr. Patel advised that she continued to be disabled.

By decision dated July 26, 2006, the Office denied the claim for compensation for the period December 5, 2005 to March 6, 2006 as the medical evidence was insufficient to establish causal relationship.

On August 9, 2006 appellant requested a hearing and advised that she was submitting a January 23, 2006 report from Dr. Jeffrey Tedder, a Board-certified orthopedic surgeon. She submitted additional reports dated July 6, 2006 to February 16, 2007 in which Dr. Patel reiterated his diagnoses and conclusions.[1] On a February 20, 2007 he advised that appellant had work-related injuries to her back, neck and knee, which were orthopedic in nature with neurological damage due to this trauma, as a result of the 2004 work accident. He diagnosed lumbar/thoracic radiculitis, cervical radiculitis and tension headaches.

[1] Dr. Patel additionally diagnosed depression.

At the February 27, 2007 hearing, appellant's representative argued that there was a connection between the neurological problems she had experienced since December 2005 and the October 2004 employment injury.[2] Appellant testified that she had not returned to work. In a March 26, 2007 report, Dr. Patel advised that appellant's neurological conditions were documented by the positive findings on nerve conduction studies and MRI scans. He diagnosed cervical radiculopathy, carpal tunnel syndrome, tension headaches and lumbosacral radiculitis and explained that carpal tunnel syndrome could occur from direct force or trauma to the wrist such as bracing the body from a free fall and that upper extremity articulations from direct trauma could result in neck, shoulder, elbow and knee problems. Dr. Patel stated that the December 7, 2005 MRI scan documented appellant's cervical condition and that the initial injury to the knees led to entrapment conditions of the tibial and peroneal nerves as found on the lower extremity nerve conduction study of December 2, 2005.[3] He stated:

> "Due to the mechanism of the traumatically[-]induced injury, there is a general weakening of the supportive soft tissue structure. The connective tissue has become stretched and torn causing it to lose its tonicity and become lax. When the supporting tissue becomes lax, it gives rise to spinal instability. This unstable condition allows misalignment of vertebral bodies, posterior joints and extremity joints. These types of injuries are subject to episodes of remissions and exacerbations caused by various aggravations. It is felt considering the patient's subjective symptmato1ogy, the objective findings of comparative tests and examinations and past experience with similar cases, that the weakness resulting from this injury may well predispose these areas to further problems from aggravation or trauma which might not have otherwise have bothered her prior to the incident. They are predisposed to a greater likelihood than the average individual who has not sustained such trauma, of future injuries and exacerbation. Furthermore, injuries of this nature generally tend to result in premature discogenic spondylosis and advancing degenerative joint disease or osteoarthritis of the spine."

Dr. Patel advised that appellant's neurological problems be accepted as due to the October 1, 2004 employment injury.

By decision dated April 30, 2007, an Office hearing representative affirmed the July 26, 2006 decision. The hearing representative noted that Dr. Canizares had returned appellant to full duty on December 17, 2004. The hearing representative found the medical evidence insufficient to support appellant's claim of disability causally related to the October 1, 2004 injury or to establish an additional employment-related condition.

On January 2, 2008 appellant, through her attorney, requested reconsideration, arguing that the reports of Dr. Patel and Dr. Tedder were sufficient to establish entitlement and that the

[2] Appellant was represented at the hearing by O.D. Elliott of the National Association of Letter Carriers.

[3] Copies of the studies were submitted. The upper extremity study demonstrated bilateral carpal tunnel syndrome and ulnar entrapment neuropathies at the left elbow. The lower extremity study demonstrated tibial and peroneal neuropathies, L5 neuropathies and peripheral neuropathy.

claim should be accepted as an occupational disease. In a January 23, 2006 report, Dr. Tedder noted that appellant had "recent falls" and recorded her complaints of cervical spine, left ankle and bilateral knee pain. He reviewed MRI scan results, noting that the lumbar spine demonstrated minimal disc herniation at L5-S1, that both knees showed moderate chondromalacia and that MRI scan of the left ankle was negative. Dr. Tedder advised that appellant's employment duties aggravated her chondromalacia, which were "definitely exacerbated" by recent falls. Physical findings included tenderness in the cervical and trapezial areas, trace swelling, positive medial joint line tenderness and positive medial McMurray's of the knees and trace swelling and tenderness of the left ankle. He diagnosed chronic post-traumatic left upper extremity numbness and tingling consistent with carpal tunnel, chronic post-traumatic bilateral knee pain with chondromalacia, chronic post-traumatic left ankle pain and chronic post-traumatic cervical spine syndrome. In reports dated January 29 and February 18, 2008, Dr. Patel repeated his diagnoses and conclusions.

In a merit decision dated March 17, 2008, the Office denied modification of the April 30, 2007 decision. It advised appellant that, since she was alleging new work factors, she should file a Form CA-2, occupational disease claim.

LEGAL PRECEDENT

A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."[4] A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[5] Where no such rationale is present, medical evidence is of diminished probative value.[6]

Section 10.5(f) of Office regulations defines the term "disability" as the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.[7] Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Federal Employees' Compensation Act.[8] When, however, the medical evidence establishes that the

[4] 20 C.F.R. § 10.5(x); *R.S.*, 58 ECAB ____ (Docket No. 06-1346, issued February 16, 2007).

[5] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[6] *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

[7] 20 C.F.R. § 10.5(f); *see W.P.*, 59 ECAB ____ (Docket No. 08-202, issued May 8, 2008).

[8] *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, the employee is entitled to compensation for any loss of wage-earning capacity resulting from the employment injury.[9] Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[10]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[11] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical opinion of whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12]

The Board will not require the Office to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[13]

ANALYSIS

The Board finds that appellant has not established that her claimed recurrence of disability beginning December 5, 2005 was caused by the accepted October 1, 2004 employment injury. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.[14] Medical opinion evidence must be 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.[15]

The accepted conditions in this case are an open wound and contusion to the right knee and strains to the left ankle, left knee and left wrist. To establish that a claimed recurrence of the

[9] *Roberta L. Kaaumoana*, 54 ECAB 150 (2002).

[10] *Tammy L. Medley*, 55 ECAB 182 (2003).

[11] *Jennifer Atkerson*, 55 ECAB 317 (2004).

[12] *I.J.*, *supra* note 5; *Victor J. Woodhams*, 41 ECAB 345 (1989).

[13] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[14] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[15] *Roy L. Humphrey*, 57 ECAB 238 (2005).

condition was caused by the accepted injury, medical evidence of bridging symptoms between the present condition and the accepted injury must support the physician's conclusion of a causal relationship.[16] Appellant did not see Dr. Patel until December 2005, 14 months after the fall, when she reported a history that she injured her neck and back when she fell on October 1, 2004. The medical evidence contemporaneous to the fall does not support that contention as neither Dr. Buette, who saw appellant on the date of injury, nor Dr. Canizares, who followed her for two months after the October 1, 2004 injury, reported that she complained of any neck or back pain. The first cervical MRI scan that demonstrated a disc protrusion and arthritic changes was obtained on July 21, 2005, nine months after the fall on October 1, 2004. When diagnostic testing is delayed, uncertainty mounts regarding the cause of the diagnosed condition and a question arises as to whether that testing in fact documents the injury claimed by the employee.[17] In this case, there is no medical evidence of bridging symptoms between the claimed recurrence and the accepted October 1, 2004 employment injury.[18]

Dr. Patel advised that appellant became totally disabled in December 2005 and diagnosed headaches, cervical radiculopathy with hand numbness and lumbosacral radiculopathy with pain and spasm due to the October 1, 2004 fall. On March 26, 2007 he advised that the direct trauma of the fall on October 1, 2004 could cause these conditions. The Board however finds that Dr. Patel provided insufficient rationale to establish that his diagnosed conditions, which have not been accepted as employment related, were caused by the fall or that appellant sustained a recurrence of disability on December 5, 2005. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to his federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[19] The Board finds that Dr. Patel's opinion that appellant's neurological problems were caused by the October 1, 2005 employment injury is insufficient to meet her burden. He did not provide a complete and accurate history of the injury and accepted conditions and he did not furnish a reasoned explanation regarding how this slip and fall caused disability as of December 5, 2005. Dr. Patel's opinion is therefore insufficient to establish that appellant sustained a recurrence of disability causally related to the October 1, 2004 employment injury.

In a January 23, 2006 report, Dr. Tedder merely reported a history that appellant had "recent falls" and provided no opinion regarding her ability to work. While he advised that appellant's job duties as a letter carrier exacerbated her chondromalacia, that condition has not been accepted as employment related and Dr. Patel did not relate any of his diagnoses to her October 1, 2004 employment injury.

[16] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[17] *Id*.

[18] *Id.*

[19] *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006).

The record in this case does not contain a medical report providing a rationalized medical opinion that appellant's claimed recurrence of disability was caused by the accepted injuries.[20] As appellant did not submit medical evidence sufficient to establish her claim, she did not meet her burden of proof to establish that she sustained a recurrence of total disability on December 5, 2005 and the Office properly denied her claim.[21]

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a recurrence of total disability on December 5, 2005 causally related to the October 1, 2004 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 17, 2008 and April 30, 2007 are affirmed.

Issued: November 13, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[20] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[21] *Tammy L. Medley*, *supra* note 10.