United States Department of Labor
Employees' Compensation Appeals Board

S.F., Appellant	)	
and	)	**Docket No. 08-1841**
	)	**Issued: January 16, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Colcord, OK, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On June 18, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated April 15, 2008.[1] 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 January 20, 2008 causally related to factors of her employment.

FACTUAL HISTORY

On February 20, 2008 appellant, a part-time flexible clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 20, 2008 she experienced low back pain radiating into her

[1] The record contains two denial letters. By file memorandum dated April 15, 2008, the Office notes that its initial denial letter was set for issuance on April 9, 2008 but for unknown reasons was not sent. Another notice of denial dated April 15, 2008 was issued.

left leg after lifting a four foot pile of letters in the course of her federal employment. She submitted no medical evidence in support of her claim.

By letter dated March 5, 2008, the Office informed appellant that the evidence she submitted in support of her claim was insufficient to establish that she sustained an injury on the date in question. It informed her that additional factual and medical evidence was necessary to adjudicate her claim.

Appellant thereafter submitted a work restriction form, dated February 26, 2008, signed by Dr. R. Hendricks, a Board-certified orthopedic surgeon, who provided a diagnosis of degenerative herniated disc at L4-5 and stated a work status of "no work." This form also noted that appellant was to attend physical therapy and had been off work since January 21, 2008 due to a low back injury.

Appellant also submitted a number of work restriction forms from a physician's assistant dating from October 29, 2007 through February 26, 2008. The Office also received an unsigned work restriction note dated November 29, 2007 stating that appellant was to return to work on December 3, 2007 with limited activity. The note restricted lifting to a maximum of 20 pounds for one week.

By decision dated April 15, 2008, the Office denied appellant's claim for compensation because the medical evidence did not demonstrate that her alleged medical condition was related to the accepted incident of January 20, 2008.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[4]

The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury 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 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

[2] 5 U.S.C. §§ 8101-8193.

[3] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[4] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

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.[5]

ANALYSIS

The Office properly denied appellant's claim as the evidence is insufficient to substantiate her claim. It accepted that she lifted the four-foot stack of mail on January 20, 2008, however, the Office found that she had not established that her diagnosed back condition of degenerative herniated disc at L4-5 was causally related to this incident.

Section 8102(2) of the Act defines, in relevant part, "'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."[6] Thus the various work restriction notes signed by the physician's assistant, do not constitute competent medical evidence as they are not from a physician pursuant to the Act.[7]

The form report from Dr. Hendricks dated February 26, 2008 is of little probative value to appellant's claim. To be of probative value, 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.[8] Dr. Hendricks did not provide any information regarding appellant's history of injury or any information regarding any preexisting lumbar condition. He did not attempt to provide any explanation as to how lifting mail on January 20, 2008 would have caused the herniated and degenerative disc condition he diagnosed on February 26, 2008.

There are no other medical reports of record. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor is the belief that her condition was caused, precipitated or aggravated by her employment sufficient to establish causal relationship.[9] Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

[5] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[6] 5 U.S.C. § 8101(2).

[7] *Ricky S. Storms*, 52 ECAB 349, 353 (2001).

[8] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[9] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained an employment-related injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 15, 2008 is affirmed.

Issued: January 16, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board