United States Department of Labor
Employees' Compensation Appeals Board

C.H., Appellant	)	
and	)	**Docket No. 09-478**
	)	**Issued: October 20, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Austin, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 9, 2008 appellant filed a timely appeal from a September 18, 2008 merit decision of the Office of Workers' Compensation Programs denying her claim and a November 13, 2008 decision denying further review of the merits of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained an injury on March 13, 2006, as alleged; and (2) whether the Office properly denied her application for reconsideration without further merit review.

FACTUAL HISTORY

On March 28, 2007 appellant, then a 49-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained injury on March 13, 2006 when she was struck by a hamper. She reported the time of the incident as 4:30 a.m. and that the hamper was pushed by a coworker, Ms. Lindeman. Appellant noted that she was hit in the torso, lost her balance and

struck a wire cage container of parcels. She listed back and left side hip pain and reported the incident to her supervisor on March 18, 2006.

In a November 6, 2006 letter, an employing establishment supervisor stated that, pursuant to an investigation, a coworker advised that the March 13, 2006 incident appeared to be an accident. In an investigative memorandum of December 13, 2006, a postal inspector stated that appellant's coworker reported that appellant was hit by a push cart that had bounced off a cart pushed by Ms. Lindeman. In a letter dated March 29, 2007, appellant's supervisor stated that when she reported the March 13, 2006 incident, she did not indicate that she needed medical attention or wanted to file a claim.

The employing establishment submitted a May 1, 2007 letter controverting the claim. It noted that Ms. Lindeman did not clock in to work on March 13, 2006 until 4:30 a.m., and since the parcel area was located 50 yards from the time clock, the incident could not have occurred at 4:30 a.m.

In a report dated March 21, 2007, Dr. Anthony Hicks, an internist, provided results on examination. The diagnoses included low back pain, lumbar and sacroiliac sprain/strain, described as "work-related by patient." Dr. Hicks stated that appellant's complaints were likely related to employment as the onset of complaints started at work and were connected to a specific incident. He did not discuss the specific incident.

By decision dated May 18, 2007, the Office denied the claim for compensation. It found that the incident could not have occurred on March 13, 2006 as alleged because Ms. Lindeman did not report to work until 4:30 a.m.

Appellant requested a review of the written record. In a September 10, 2007 report, Dr. Hicks quoted the definitions of aggravation. He stated that there were no complaints prior to the injury in question and no other physical activities that might account for appellant's symptoms. Dr. Hicks further stated, "the above referenced patient's injuries ARE more likely than not solely DIRECTLY RELATED TO (*i.e.,* "CAUSED BY') the work incident as reported, and have definitively WORSENED (*i.e.,* "AGGRAVATED") the patient's preexisting anatomy AFTER the specific work-related incident occurred as reported." (Emphasis in the original.) Again, he did not discuss the specific work incident.

In a statement received by the Office on September 18, 2007, appellant's coworker reported that he had clocked in on March 13, 2006 at 4:30 a.m. and Ms. Lindeman had clocked in after him. He stated that, while they were distributing parcels, Ms. Lindeman shoved the hampers and one hit appellant in the back.

In a decision dated November 5, 2007, the hearing representative affirmed the May 18, 2007 decision. She found that appellant's actions after the alleged incident were inconsistent with having sustained a disabling injury. The hearing representative found that the evidence from Dr. Hicks was of no probative value because he examined appellant a year after the alleged incident.

Appellant requested reconsideration. In a July 16, 2007 report, Dr. J. Lowell Haro, a pain management specialist, reported that appellant was seen for low back pain radiating to the left

buttock. He stated that the onset of her symptoms was March 13, 2006. In a September 11, 2007 report, Dr. Haro diagnosed chronic intractable low back pain, lumbar degenerative disc disease, L4-5 anterolisthesis and lumbar spinal stenosis. On November 29, 2007 he stated that appellant reported upon her initial evaluation that she had been struck in the back by a hamper on March 13, 2006.

By decision dated September 18, 2008, the Office denied modification of its prior decisions.

Appellant again requested reconsideration. She submitted a September 30, 2008 return to work certificate from Dr. Brent Brotz, an orthopedic surgeon, and a copy of the statement previously submitted from her coworker. On October 22, 2008 Dr. Teresa Pugh, a family practitioner, stated that appellant was treated on April 28, 2006 for low back pain and was referred for physical therapy.

In a November 13, 2008 decision, the Office denied appellant's request for reconsideration without further merit review of her claim.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[1] The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of an in the course of employment."[2] An employee seeking benefits under the Act 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 Office's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[5] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other

[1] 5 U.S.C. § 8102(a).

[2] *Valerie C. Boward*, 50 ECAB 126 (1998).

[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).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[6]

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS -- ISSUE 1

The Office did not accept that the March 13, 2006 incident occurred at 4:30 a.m., finding that Ms. Lindeman did not clock in until 4:30 a.m. The Board notes that appellant alleged the incident occurred at approximately 4:30 a.m. However, she was working with a fellow coworker who witnessed the incident. The coworker reported that he saw appellant being struck by a hamper on March 13, 2006. In addition, appellant advised her supervisor of the incident a few days later, and her supervisor confirmed that appellant reported the incident.

The Board notes that an employee's statement regarding the occurrence of an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.[8] The evidence of record supports that on the morning of March 13, 2006 appellant was struck by a hamper while in the performance of duty. The evidence as to when Ms. Lindeman signed into work is not so probative to establish that the incident did not happen as alleged.

The issue is whether the medical evidence is sufficient to establish a diagnosed injury causally related to the employment incident. In this regard, the medical evidence of record does not contain a rationalized medical opinion on the causal relationship between appellant's diagnosed back condition and the March 13, 2006 employment incident. With respect to Dr. Hicks, appellant did not begin treatment until March 21, 2007, one year after the incident. He stated in general terms that appellant's condition was employment related, without providing any specific medical rationale for his conclusion.[9] Dr. Hicks did not provide a complete factual and medical history, describe the employment incident or her subsequent medical treatment. He provided a number of diagnoses, without clearly explaining why a specific diagnosis was causally related to the March 13, 2006 incident. Dr. Haro provided only a brief history that

[6] *Id.*

[7] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[8] *Thelma Rogers*, 42 ECAB 866 (1991).

[9] For example, a statement that a condition is causally related to employment because the employee was asymptomatic before the injury is of little probative value without supporting medical rationale. *Michael S. Mina*, 57 ECAB 379 (2006).

appellant reported being struck by a hamper on March 13, 2006, without offering a rationalized medical opinion on causal relationship with a diagnose condition.

On appeal, appellant contends that "management refused to properly handle my injury," and she could not secure the proper paperwork for her claim. The record establishes that she filed a CA-1 signed March 28, 2007. Although there was some delay in filing the claim, this is not relevant to the grounds on which her claim was denied. Appellant must submit probative medical evidence on the issue of causal relation. It is her burden of proof to provide rationalized medical opinion from a physician based on a complete factual and medical background. The Board finds she did not meet her burden of proof in this case.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision.[10] The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."[11]

An employee seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent evidence not previously considered by the Office.[12]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[13]

ANALYSIS -- ISSUE 2

Appellant filed an application for reconsideration on October 22, 2008. She did not show that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office.

Appellant submitted an October 22, 2008 note from Dr. Pugh, who indicated that she had been seen on April 28, 2006 for low back pain. Dr. Pugh did not provide any additional detail pertaining to the March 13, 2006 employment incident. As noted, the evidence must be new and

[10] 5 U.S.C. § 8128(a).

[11] 20 C.F.R. § 10.605 (1999).

[12] *Id*. at § 10.606(b)(2).

[13] *Id*. at § 10.608.

relevant to require the Office to reopen a case for merit review. Dr. Pugh did not provide relevant medical evidence regarding an employment-related injury. The September 30, 2008 report from Dr. Brotz also does not address the relevant medical issue. As to the statement from appellant's coworker, this was previously submitted and therefore does not constitute new evidence.

The Board finds that appellant did not meet the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office, or submit new and relevant evidence. Accordingly, the Office properly denied reopening her claim for merit review.

CONCLUSION

The Board finds that the evidence is sufficient to establish an employment incident on March 13, 2006, but the medical evidence is not sufficient to establish an injury causally related to the employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 13, 2008 is affirmed. The September 18, 2008 decision is modified to reflect an employment incident occurring on March 13, 2006, and is affirmed as modified.

Issued: October 20, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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