United States Department of Labor
Employees' Compensation Appeals Board

L.D., Appellant	)	
and	)	**Docket No. 09-918**
	)	**Issued: October 26, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 25, 2009 appellant filed a timely appeal from a January 27, 2009 merit decision of the Office of Workers' Compensation Programs affirming a May 20, 2008 merit decision that denied his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant satisfied his burden of proof to establish that he sustained an injury in the performance of duty on March 5, 2008 causally related to his employment.

FACTUAL HISTORY

On April 8, 2008 appellant, a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) for bruises and low back pain. He attributed his injury to a March 5, 2008 incident when, while trying to catch his breath, he placed his hand on his delivery van; his hand slipped causing him to fall against the bumper of his car and hit the left side of his back. The employing establishment controverted appellant's claim.

Appellant submitted an April 3, 2008 report (Form CA-17) from Dr. Fredrick Harris, a Board-certified diagnostic radiologist, diagnosing appellant with lumbar contusion.

By decision dated May 20, 2008, the Office denied the claim because the evidence of record was insufficient to demonstrate that the claimed medical condition was caused by the identified employment incident.

Appellant disagreed and on June 14, 2008, through his attorney, requested a hearing.

Appellant submitted notes, dated June 10 and 24, 2008, in which Dr. Prasanna L. Soni, a Board-certified orthopedic surgeon, reported findings on examination. Dr. Soni noted that appellant had related a history of injury that on March 5, 2008 he had an asthma attack at work and fell backwards onto a bumper of a car. In a July 22, 2008 note, he opined that, based on appellant's description, his injury was work related.

In a November 17, 2008 report, Dr. Soni reviewed appellant's history of injury and diagnosed appellant with lumbar strain. He opined that appellant's condition was causally related to his employment because he did not have any back problems prior to this injury.

An oral hearing was conducted on November 17, 2008 and appellant and his attorney were present.

Appellant submitted a January 13, 2009 note in which Dr. Soni reported findings on examination and diagnosed appellant with pain.

By decision dated January 27, 2009, the hearing representative affirmed the Office's May 20, 2008 decision because the evidence of record did not demonstrate that the alleged medical condition was causally related to the identified employment incident.[1]

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[2] Second, the employee must submit

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[1] On appeal, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.,* 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.) As this evidence was not part of the record when the Office issued either of its previous decisions, the Board may not consider it for the first time as part of appellant's appeal.

[2] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[3]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee'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 employee, 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 employee.[4]

ANALYSIS

Appellant alleged that his low back injury was caused by a March 5, 2008 employment incident. The Office has accepted that he fell against the bumper of his car on March 5, 2008, while catching his breath during an asthma attack.[5] As noted above, appellant's burden is to establish that his injury was causally related to the identified March 5, 2008 incident. Causal relationship is a medical issue that can only be proven through production of rationalized medical opinion evidence. Appellant has not produced such evidence and therefore the Board finds he has not satisfied his burden of proof.

The medical evidence of record consists of reports and notes from Drs. Harris and Soni. Dr. Harris' report is of little probative value on the issue of causal relationship because it lacks an opinion on the causal relationship between a medically diagnosed condition and the identified employment incident. While Dr. Harris diagnosed appellant with lumbar contusion, he provided no explanation concerning how the identified March 5, 2008 employment incident caused this condition. Reports lacking an opinion on causal relationship are of little probative value.[6] As such Dr. Harris' report is of little probative value and is insufficient to satisfy appellant's burden of proof.

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[3] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[4] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[5] The Board has recognized that, although a fall is idiopathic, an injury resulting from an idiopathic fall is compensable if some job circumstance or working condition intervenes in contributing to the incident or injury, for example, the employee falls onto, into or from an instrumentality of the employment or where, instead of falling directly to the floor on which he or she has been standing, the employee strikes a part of his or her body against a wall, a piece of equipment, furniture or machinery or some like object. An employee has the burden of establishing that he or she struck an object connected with the employment during the course of the idiopathic collapse. *Margaret Cravello,* 54 ECAB 498 (2003).

[6] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also*, *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001).

Dr. Soni's notes and report are of little probative value on causal relationship as they too lack an adequate opinion on the causal relationship between a medically diagnosed condition and the identified employment incident. As noted above, reports lacking an opinion on causal relationship are of little probative value.[7] Dr. Soni diagnosed appellant with lumbar strain but did not explain if and how this condition was caused by the identified March 5, 2008 incident. Although he opined that appellant's condition was causally related to his employment because prior to March 5, 2008 appellant did not have any back problems, this opinion is of no probative value as it is unsupported by medical rationale. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.[8]

Dr. Soni also diagnosed appellant with pain but pain is a symptom, not a compensable medical diagnosis.[9] These deficiencies reduce the probative value of Dr. Soni's notes and report and, therefore, they are insufficient to satisfy appellant's burden of proof.

Appellant has not submitted probative medical evidence in support of his claim and therefore the Board finds he has not satisfied his burden of proof.

CONCLUSION

The Board finds appellant has not satisfied his burden of proof to establish that he sustained an injury in the performance of duty on March 5, 2008 causally related to his employment.

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[7] *Id.*

[8] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007)*; Ruth R. Price,* 16 ECAB 688, 691 (1965).

[9] *Robert Broome,* 55 ECAB 339, 342, (2004).

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2009 and May 20, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 26, 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