United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 09-2329**
	)	**Issued: June 29, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Sam Dexter, MO, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 September 21, 2009 appellant filed a timely appeal from an August 28, 2009 decision of the Office of Workers' Compensation Programs affirming a March 12, 2009 decision denying her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issues in this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a back condition in the performance of duty.

FACTUAL HISTORY

On November 29, 2008 appellant, then a 50-year-old rural letter carrier, filed an occupational disease claim alleging that she sustained a pinched nerve in her low back and a

possible L4-5 herniated disc as a result of twisting and turning while in the performance of duty.[1] She became aware of her lumbar condition in 2003 and realized it was caused by her federal employment in November 2008. Appellant did not stop work.

By letters dated December 18, 2008, the Office advised appellant and the employing establishment that additional factual and medical evidence was needed.

In a November 7, 2008 report, Dr. Franklin Hayward, a Board-certified neurosurgeon and osteopath, noted that appellant was being treated for cervical pain and paresthesias. He also noted that she presented with right leg pain, which was present since 2001. Dr. Hayward stated that appellant's leg was worse while working as she had to sit in an awkward position in a truck and bend and twist to distribute mail. Appellant attributed her pain to her work and noticed an improvement when she was off work for a few weeks. Dr. Hayward recommended a microdiscectomy, lumbar laminectomy at L4-5 on the right. He stated that "it is reasonable that her work could have caused this or at least exacerbated her complaint being as [appellant's] pain is made worse while at work and [she] noticed an improvement in her pain since being off work." In a December 16, 2008 report, Dr. Hayward opined that he was "unsure" of the causality of a disc herniation at L4-5; however, it appeared that appellant's condition was "being aggravated by the continuous bending and twisting at her workplace." In a December 20, 2008 report, he reviewed a magnetic resonance imaging (MRI) scan that showed disc desiccation at L4-5 and L5-S1. He explained that appellant did not wish to undergo a surgery as her pain had improved.

A December 30, 2008 lumbar MRI scan, read by Dr. Vernon W. Barrow, a Board-certified diagnostic radiologist, revealed a mild broad based disc bulge at L4-5 and L5-S1.

In a statement dated December 30, 2008, appellant noted that her back and leg pain was worse after unloading, bending and stooping. Her physician advised that staying in a bent position "probably caused my back to flair up." Appellant performed limited duties that included intermittent walking, standing, sitting and lifting no more than 15 pounds. She stated that her physician advised her that her back condition was likely due to her duties which included driving and sitting in her mail truck for 28 years.

In a statement dated January 12, 2009, Kelly Miesner, an employing establishment health and resource management specialist, controverted the claim. She noted that appellant worked with horses and had participated in competitive barrel racing for years. Ms. Miesner advised that appellant qualified for the National Barrel Horse Association (NBHA) World Championships as recently as 2007. She noted that appellant did not address her outside hobbies. Ms. Miesner stated that appellant had not performed her rural carrier duties since May 23, 2008. She enclosed a copy of a qualifying sheet for the NBHA World Championships, which revealed that appellant was listed as being qualified for an open slot. In an undated statement, Michael Pullam, the postmaster, noted that appellant had an accident earlier in the year, which was not witnessed and that she rode horses and was a competitive barrel racer.

[1] Appellant has a prior accepted claim for a May 23, 2008 employment injury. The Office accepted the claim for concussion without coma, sprain of the knee and leg, tear of the medial meniscus and cervical disc displacement (herniated disc). No. xxxxxx166. This other claim is not presently before the Board.

By decision dated March 12, 2009, the Office denied appellant's claim. It found that the medical evidence did not establish that her claimed back condition was related to the established work activities.

Appellant requested a hearing that was held on June 5, 2009. In a May 26, 2009 statement, she detailed her experiences with her horses and barrel racing. Appellant explained that, at most, she lifted a three-pound coffee can to put grain in to feed the horses, they were self-watered and that hired hands delivered hay. She would have to cut the wire from around the bale and take a couple flakes of hay at a time. Appellant explained that her barrel racing activities were purely leisure and not physically stressful. On July 26, 2004 Dr. Neal Garner, a Board-certified family practitioner and osteopath, noted that appellant related that she "ends up having to sit in some crazy positions at her work and she states that in thinking about that that there may be some relationship there." Dr. Garner determined that she had probable sciatica along the right leg and hip.

In a June 30, 2009 letter, the employing establishment again controverted the claim. On August 6, 2009 appellant reiterated that she engaged in bending and twisting at work.

In an August 28, 2009 decision, an Office hearing representative affirmed the Office's March 12, 2009 decision. She found that the medical evidence was not sufficient to establish the claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

evidence required to establish causal relationship, generally, 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 implicated 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.[5]

ANALYSIS

The evidence establishes that appellant has a broad-based disc bulge at L4-5 and L5-S1 and engaged in twisting and turning activities while in the performance of duty. However, she did not submit sufficient medical evidence to establish that her lumbar disc condition was caused or aggravated by the activities she performed in federal employment.

In a July 26, 2004 treatment note, Dr. Garner noted that appellant related a history of sitting "in some crazy positions at her work and she states that in thinking about that there may be some relationship there." He found that she had probable sciatica along the right leg and hip. Although Dr. Garner noted that appellant believed that there was a relationship between her back condition and her federal employment, he did not offer an opinion regarding the cause of her condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[6]

Dr. Hayward reported a history of right leg pain since 2001. He noted that appellant advised that her leg became worse while working as she had sat awkwardly in a truck and bend and twist to distribute mail. Dr. Hayward recommended a microdiscectomy and lumbar laminectomy at L4-5 on the right. Regarding the issue of causal relation, he opined that "it is reasonable that her work could have caused this or at least exacerbated her complaint being as the patient's pain is made worse while at work and the patient noticed an improvement in her pain since being off work." The Board has held that medical opinions stating that there "could be" a causal relationship are speculative in nature and diminish the probative value of Dr. Hayward's opinion.[7] Moreover, Dr. Hayward did not provide a medical opinion based on a full and accurate history of appellant's work duties and outside activities, including barrel racing. A claimant must submit a physician's report that addresses the employment factors identified as causing the claimed condition and taking these factors into consideration as well as findings upon examination, states whether the employment injury caused or aggravated the diagnosed conditions and presents medical rationale in support of his or her opinion.[8] The Board notes that while appellant stated that her barrel horse racing activities were relaxing, Dr. Hayward did not relate a history of this activity or explain how this would affect her diagnosed low back

[5] *Id.*

[6] *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009).

[7] *Id.*

[8] *D.E.*, 58 ECAB 448 (2007); *J.M.*, 58 ECAB 303 (2007).

condition.[9] On December 16, 2008 Dr. Hayward stated that he was "unsure" of the causality of a disc herniation at L4-5; however, it appeared that appellant's condition was "being aggravated by the continuous bending and twisting at her workplace." This opinion on causal relationship is also speculative and of limited probative value. Dr. Hayward did not adequately explain how appellant's modified work duties caused or aggravated her back condition to a reasonable degree of medical certainty. He did not discuss the reasons how twisting or turning caused or aggravated the diagnosed L4-5 herniation.

The December 20, 2008 MRI scan from Dr. Barrow reported findings and did not provide any opinion on the cause of the reported condition. Other medical evidence provided by appellant also did not address causal relationship.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[10] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[11] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

There is no reasoned medical evidence based on a full and accurate factual history explaining how appellant's employment duties caused or aggravated her back condition. Appellant has not met her burden of proof to establish that she sustained a lumbar condition in the performance of duty.[12]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a back condition causally related to factors of her federal employment.

[9] *See Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

[10] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[11] *Id.*

[12] The Board notes that appellant submitted evidence subsequent to the August 25, 2008 Office decision. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 28, 2009 is affirmed.

Issued: June 29, 2010
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