United States Department of Labor
Employees' Compensation Appeals Board

L.K., Appellant	)	
and	)	**Docket No. 10-2053**
	)	**Issued: April 7, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Richmond, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 10, 2010 appellant filed a timely appeal from a June 22, 2010 merit decision of the Office of Workers' Compensation Programs denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act and 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 met her burden of proof to establish that she sustained a back injury in the performance of duty on April 21, 2010.

FACTUAL HISTORY

On May 6, 2010 appellant, then a 21-year-old casual clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 21, 2010 she sustained a back injury when she was lifting tubs and pushing equipment. She notified her employer of her injury on May 6, 2010. The employing establishment indicated that appellant stopped work on April 21, 2010 and first

received medical care on April 22, 2010. However, it controverted her continuation of pay, alleging that the supporting documentation was not complete.

In return to work slips dated April 22 to May 1, 2010, Dr. Bonnie L. Riportella, Board-certified in emergency medicine, stated that appellant was unable to work from April 22 to May 1, 2010 and could return once she was cleared by her obstetrician gynecologist (OB/GYN). She also restricted appellant from lifting greater than 10 pounds.

By letter dated May 21, 2010, the Office informed appellant that the evidence received failed to identify a diagnosed condition, establish that the incident occurred as alleged or that she sustained an injury in the performance of duty. It requested additional factual and medical evidence and asked her to respond to the provided questions within 30 days.

In an April 27, 2010 ultrasound report, Dr. Jean M. Dufour, Board-certified in diagnostic radiology, noted that appellant had back and abdominal pain. She found that appellant was seven weeks pregnant. Dr. Dufour also noted appellant's chief complaint as back pain and found shortness of breath, back pain and a threatened early pregnancy.

In an April 27, 2010 medical report from St. Francis Medical Center, appellant was diagnosed with a threatened miscarriage and advised to avoid vigorous activity such as heavy lifting, prolonged periods of standing and strenuous physical workouts. She was also diagnosed with back pain.

In a May 25, 2010 duty status report (Form CA-17), appellant's OB/GYN noted that appellant injured her back on April 21, 2010 when lifting and diagnosed her with low back pain. The physician noted that appellant was pregnant and could return to work, limiting her lifting to no more than 50 pounds a day.

By decision dated June 22, 2010, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained an injury because she did not submit any medical evidence containing a medical diagnosis in connection with the April 21, 2010 employment incident. It noted that the medical evidence submitted contained a diagnosis of "pain" which is a symptom and not a diagnosed medical condition.[1]

LEGAL PRECEDENT

An employee seeking benefits under the Act 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the

[1] The Board notes that appellant submitted additional evidence after the Office rendered its June 22, 2010 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision and, therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[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.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[5] 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS

The evidence establishes that the incident occurred as alleged when appellant was lifting tubs and pushing equipment on April 21, 2010. The issue, therefore, is whether she has submitted sufficient medical evidence to establish that the employment incident caused a back injury. The Board finds that she did not submit sufficient medical evidence to support that she sustained a back injury causally related to the April 21, 2010 employment incident.[7] The medical evidence is deficient on two grounds: (1) it fails to provide a firm diagnosis; and (2) there is no narrative opinion on causal relationship between a diagnosed condition and the employment incident.

Appellant submitted return to work slips dated April 22 to May 1, 2010 from Dr. Riportella, which noted her work restrictions. Dr. Riportella's notes do not mention a work-related incident or name a specific injury and are insufficient to establish appellant's claim.

[2] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Elaine Pendleton*, *supra* note 2.

[5] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[6] *James Mack*, 43 ECAB 321 (1991).

[7] *See Robert Broome*, 55 ECAB 339 (2004).

On April 27, 2010 Dr. Dufour reported that appellant had back and abdominal pain and diagnosed a pregnancy. She noted appellant's chief complaint as back pain and diagnosed shortness of breath, back pain and a threatened early pregnancy. Dr. Dufour's diagnosis of low back pain is a description of a symptom rather than a clear diagnosis of the medical condition.[8] It becomes almost impossible to establish causal connection in appellant's claim because the physician has not identified a medical condition that causes her pain.

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.[9] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[10] Thus, Dr. Dufour's medical report is insufficient to establish appellant's burden of proof.

The remaining medical evidence of record is also not sufficient to establish a diagnosed condition causally related to the April 21, 2010 employment incident. The signature on the May 25, 2010 duty status report which reported low back pain on April 21, 2010 is illegible. Even if signed by a physician, this report would not constitute probative medical evidence because it failed to provide a firm diagnosis and did not adequately explain the cause of appellant's back condition.[11]

In the instant case, the record is without rationalized medical evidence establishing a causal relationship between the April 21, 2010 employment incident and appellant's back condition. Thus, appellant has failed to establish her burden of proof.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on April 21, 2010 in the performance of duty, as alleged.

[8] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[9] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[10] *See Lee R. Haywood*, 48 ECAB 145 (1996).

[11] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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