United States Department of Labor
Employees' Compensation Appeals Board

T.N., Appellant	)	
and	)	**Docket No. 13-1000**
	)	**Issued: September 16, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Portland, OR, Employer	)	

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

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 4, 2013 appellant filed a timely appeal from a September 10, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision which denied her claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant met her burden of proof to establish that she developed a low back condition while in the performance of duty.

FACTUAL HISTORY

On January 8, 2011 appellant, then a 43-year-old clerk filed an occupational disease claim alleging that she developed a herniated disc after performing repetitive walking, standing, pushing, sorting, lifting and bagging parcels of mail at work. She became aware of her condition

[1] 5 U.S.C. §§ 8101-8193.

on November 30, 2010 and first realized it was causally related to her work on December 20, 1010. Appellant stopped work on November 30, 2010.

Appellant was treated by Dr. Tori Jones, a Board-certified orthopedic surgeon. In reports dated December 6 and 20, 2010, Dr. Jones noted treating appellant for a nonwork-related medical illness and that she was totally disabled. Appellant was treated by Dr. John P. Seymour, a Board-certified orthopedic surgeon, on January 14, 2011. Dr. Seymour diagnosed a disorder of the lumbar intervertebral disc and right lumbar radiculopathy and advised that appellant was disabled from January 14 to February 4, 2011.

In a letter dated February 9, 2011, OWCP advised appellant of the factual and medical evidence needed to establish her claim and requested that she submit such evidence.

A December 6, 2010 x-ray of the lumbar spine revealed a minimal scoliotic curvature. A December 16, 2010 magnetic resonance imaging (MRI) scan of the lumbar spine revealed scoliosis and multilevel degenerative changes including an extruded disc fragment at L2-3 with mass effect on the right L2 nerve root and foraminal and lateral disc bulge at L3-4 and L4-5 contacting the L3 and L4 roots. In a December 20, 2010 report, Dr. Jones diagnosed lumbar radiculopathy, headache and disorder of the lumbar intervertebral disc. She indicated that appellant's condition seemed to have come on from a work-related injury, but could not confirm. Appellant was treated by Dr. Seymour on December 23, 2010 and February 4, 2011 for low back pain. She reported working as a clerk at the employing establishment for 22 years. On November 13, 2010 appellant performed heavy lifting and had back pain. Dr. Seymour reported a prior left lower back injury some 10 to 15 years earlier. He diagnosed right L2 lumbar disc and advised that appellant was totally disabled. In workers' compensation forms dated December 23, 2010 to February 17, 2011, Dr. Seymour diagnosed lumbar intervertebral disc disorder at L2-3 and lumbar radiculopathy from an November 30, 2010 injury and advised that appellant was disabled. On February 17, 2011 he advised that appellant was lifting sacks and pushing bins when the injury occurred. Dr. Seymour diagnosed right L2-3 herniated disc and opined that appellant was totally disabled.

In a January 6, 2011 report, Dr. Carrie Shulman, a Board-certified neurologist, treated appellant for low back pain and leg pain caused by an occupational injury. She noted intact motor and sensory examination and reflexes and diagnosed disorder of the lumbar intervertebral disc and lumbar radiculopathy. In a February 9, 2011 report, Dr. Scott Young, a Board-certified physiatrist, treated appellant for low back pain. He noted that appellant's work involved repetitive lifting of trays often weighing 40 pounds and pushing heavy carts. Dr. Young advised that appellant had a history of low back strain 15 years prior and was thereafter symptom free. On November 30, 2010 appellant reported a gradual onset of low back pain through the workday with repetitive lifting although she could not recollect one specific incident and the next day she experienced pain and tingling to the anterior right thigh. Dr. Young noted diffuse midline and paravertebral tenderness to the lumbar spine, no atrophy to the lower extremities, diminished sensation to the anterior right thigh and normal motor function. He diagnosed extruded disc fragment at L2-3 with ongoing pain and recommended epidural steroid injections and possible surgery. Dr. Young noted appellant's history was of onset of pain with fairly strenuous activities on the job and noted that she had a discrete lesion on the MRI scan and opined that this was a work-related condition. On February 18, 2011 appellant was treated by Dr. Suzanne Zarling, a

Board-certified internist, for low back pain which began after lifting and sorting parcels at the employing establishment on November 30, 2010. She diagnosed lumbar radiculopathy and recommended steroid injections which were performed on March 4 and April 8, 2011.

In an undated statement, appellant advised that on November 30, 2010 she worked in express operation where she dumped mail into a hamper and put express mail weighing from 30 to 50 pounds into sacks. She also worked in the horseshoe operation where she sorted priority mail sacks weighing 30 to 50 pounds and priority flat rate boxes and regular flat rate boxes which weighed up to 70 pounds. Appellant reported having back pain on November 30, 2010 but she kept working.

On March 10, 2011 OWCP requested that the employing establishment address the weight of items appellant was required to move, the tasks performed and precautions taken to minimize activities. In a March 15, 2011 statement, the employing establishment provided a report of appellant's work duties and noted requirements of lifting and carrying from 5 to 70 pounds intermittently with the average weight being several ounces to 20 pounds and occasionally weighing 35 to 40 pounds, but never above 40 pounds and sacks and pouches of priority mail weighing 10 pounds to 50 pounds occasionally.

In an April 22, 2011 decision, OWCP denied appellant's claim finding that the medical evidence was not sufficient to establish that her back condition was caused by employment factors.

On May 17, 2011 appellant requested a review of the written record. She submitted a December 6, 2010 lumbar spine x-ray and a December 16, 2010 MRI scan of the lumbar spine as well as reports from Dr. Jones all previously of record.

In a December 20, 2010 report of work ability, Dr. Jones noted treating appellant for a medical illness which was undetermined as to whether it was work related. On November 30, 2010 Dr. Richard Polin, a Board-certified neurologist, diagnosed L2-3 radicular pain and disorder of the lumbar intervertebral disc at L2-3. On April 8 and May 27, 2011 Dr. Zarling performed medial branch blocks. Appellant was treated by Dr. Seymour from April 22 to June 10, 2011. Dr. Seymour noted that appellant worked at the employing establishment and performed heavy lifting. He diagnosed history of right L2-3 disc herniation with L3 radiculopathy, resolved. Dr. Seymour noted that appellant had improvement of her lumbar degenerative disc disease with medial branch blocks. In a May 12, 2011 report, he noted that appellant's work involved repetitive lifting of trays often weighing 40 pounds and pushing heavy carts. Dr. Seymour noted that appellant had a history of low back strain about 15 years earlier with some referred symptoms to the left leg for a year. He noted that on November 30, 2010 appellant noted a gradual onset of low back pain through the workday with repetitive lifting though she could not recollect one specific incident. Dr. Seymour noted appellant's history of an onset of pain with fairly strenuous activities on the job with discrete lesion on MRI scan and opined that this was a work-related condition.

In a decision dated August 18, 2011, OWCP affirmed the decision dated April 22, 2011.

On July 16, 2012 appellant requested reconsideration and submitted a report from Dr. Young previously of record.

In a decision dated September 10, 2012, OWCP denied modification of the decision dated August 18, 2011.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was filed within the applicable time limitation of FECA, 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. 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.[2]

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP 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.[3] 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.[4]

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] 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]

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[2] *Gary J. Watling*, 52 ECAB 357 (2001).

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

[4] *Id*.

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

[6] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

ANALYSIS

Appellant worked as a clerk and performed repetitive walking, standing, pushing, sorting, lifting and bagging parcels of mail while in the performance of duty.

OWCP denied appellant's claim for compensation on the grounds that the medical evidence was not sufficient to establish that her low back condition or herniated disc was caused by or contributed to by her employment. The Board finds that medical evidence submitted by appellant generally supports that she developed a low back condition from lifting mail trays, mail sacks and mail carts in the performance of duty.

On February 9, 2011 Dr. Young noted appellant's employment involved repetitive lifting of trays weighing up to 40 pounds and pushing heavy carts. On November 30, 2010 appellant reported a gradual onset of low back pain through the workday with repetitive lifting. The next day, she experienced pain and tingling to the anterior right thigh. Dr. Young noted diffuse midline and paravertebral tenderness of the lumbar spine and diminished sensation to the anterior right thigh. He diagnosed an extruded disc fragment at L2-3 with ongoing pain and recommended epidural steroid injections and possible surgery. Dr. Young noted appellant's history was of onset of pain with fairly strenuous activities on the job and noted that she had a discrete lesion on the MRI scan that he stated was work related. On February 17, 2011 Dr. Seymour advised that appellant was lifting sacks and pushing bins when the injury occurred. He diagnosed right L2-3 herniated disc and opined that appellant was totally disabled. In a May 12, 2011 report, Dr. Seymour obtained a history that appellant's work involved repetitive lifting of trays often weighing 40 pounds and pushing heavy carts. On November 30, 2010 appellant noted a gradual onset of low back pain through the workday with repetitive lifting. Dr. Seymour opined that appellant's history was of onset of pain with fairly strenuous activities on the job with a discrete lesion supported by the MRI scan. He opined that this was a work-related condition. Although the physician's opinions are not fully rationalized on the issue of causal relation or aggravation, the evidence is uncontroverted in the record and sufficient to require further development of the case by OWCP.[7]

In view of the above evidence, OWCP should have referred the matter to an appropriate Board-certified medical specialist to determine whether appellant may have sustained a low back condition as a result of her employment duties. Proceedings under FECA are not adversary in nature nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[8]

Therefore, the Board finds that the case must be remanded to OWCP for preparation of a statement of accepted facts concerning appellant's working conditions and referral of the matter to an appropriate medical specialist, consistent with OWCP procedures, to determine whether appellant may have sustained a low back condition as a result of performing her employment

[7] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[8] *John W. Butler*, 39 ECAB 852 (1988).

duties. Following this, and any other further development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 10, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: September 16, 2013
Washington, DC

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

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

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