United States Department of Labor
Employees' Compensation Appeals Board

L.B., Appellant	)	
and	)	**Docket No. 07-1861**
	)	**Issued: December 13, 2007**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, San Juan, PR, Employer	)	

Appearances:
Melba N. Rivera Camacho, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 23, 2006 appellant filed a timely appeal from the April 24, 2007 merit decision of the Office of Workers' Compensation Programs denying her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a back injury while in the performance of duty on June 4, 2004.

FACTUAL HISTORY

On June 9, 2004 appellant, a 44-year-old security screener, filed a traumatic injury claim alleging that she injured her back on June 4, 2004 while working on the x-ray machine and hand-wanding passengers. On July 29, 2004 she submitted a claim for a recurrence of disability (Form CA-2a), alleging that on July 24, 2004 she experienced pain in her back during her shift.

Appellant claimed that, due to a heavy volume of passengers, she was unable to "rotate and sit down every hour," as required by her doctor's restrictions.

In a July 28, 2004 note, Dr. Edwin F. Rodriguez Allende, a treating physician, diagnosed a lumbosacral strain. He stated: "sick days since July 25 to August 5, [20]04." Appellant submitted August 2 and 13, 2004 reports, bearing an illegible signature, reflecting her reports of low back pain since June 4, 2004, after prolonged standing and providing a diagnosis of back strain.

On February 8, 2005 the Office informed appellant that her claim for a June 4, 2004 injury had been administratively closed without review but was being reopened pursuant to the filing of her recurrence claim. The Office requested additional details surrounding the alleged June 4, 2004 injury, including the work activities claimed to have caused the injury, the immediate effects of the injury and the reason she delayed seeking medical treatment. In a separate letter dated February 8, 2005, the Office advised appellant that the information submitted was insufficient to establish her claim and allowed her 30 days to submit additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion, as to how the claimed work incident caused her diagnosed condition.

Appellant submitted notes dated June 10, 2004 from Dr. G. Satz, a family physician, reflecting her complaints of pain in the sacral area for one week, "after doing heavy work." On June 14, 2004 Dr. Satz diagnosed low back sprain and placed a checkmark in the "yes" box that he believed appellant's condition was caused or aggravated by employment activities. He recommended that appellant avoid heavy lifting. On June 15, 2004 Dr. Satz diagnosed lumbosacral pain/sprain and stated that the injury occurred at work on June 4, 2004 while "bending, twisting and lifting the bag." Recommended restrictions included: intermittent sitting for no more than four hours per day; intermittent standing and walking for no more than one hour per day; twisting, bending, squatting and kneeling for no more than one hour per day and lifting no more than 10 pounds for one hour per day. Dr. Satz also stated that appellant needed intermittent changes in position every 30 minutes. Appellant also provided notes from Dr. Satz for the period June 14 through July 9, 2004.

On July 9, 2004 Dr. Satz again diagnosed a lumbosacral sprain. He recommended restrictions, including lifting or carrying no more than 10 pounds; intermittent sitting, walking or standing no more than four hours per day; and intermittent twisting and bending no more than two hours per day. On July 15, 2004 appellant accepted a light-duty assignment which included the following duties: "divesting, exit lanes and walk through metal detectors (MAG) and hand wanding. Needs to be rotated every 30 minutes and needs to be able to sit at least every other hour."

Notes from Dr. Allende dated July 28, 2004 reflect that appellant incurred low back pain while working at her job. On August 3, 2004 Dr. Marie C. Lugo Cruz, a treating physician, diagnosed an L5 strain and indicated that appellant was unable to work until August 16, 2004. On August 13, 2004 she revised appellant's recommended limitations prohibiting any carrying or lifting and limiting squatting, kneeling or reaching over the shoulder to two hours per day. Dr. Cruz diagnosed lumbosacral strain and stated that the June 4, 2004 injury occurred due to

"prolonged standing position [with] trun[k] rotation movements and lifting heavy objects." An August 3, 2004 x-ray report from Dr. Saul Cordero, a radiologist, provided an impression of L1-2 spondylosis.

On March 3, 2005 appellant stated that, on June 4, 2004, due to a heavy traffic volume in the selectee line, she was unable to adhere to her work restrictions, which required her to sit down every hour for at least 30 minutes and rotate positions every 30 minutes. By the end of her shift, she felt pain in her lower back. Appellant alleged that her duties on June 4, 2004 included "mostly standing up, lifting bags and hand wanding 45 minutes to an hour," and that she was able to sit at the x-ray operator position for only one or two 30-minute periods during her shift. On June 5, 2004 the pain was so bad that she was not able to walk, sit or stand for very long. Appellant indicated that the original injury occurred on June 4, 2004; she experienced a recurrence on July 24, 2004 and she received medical treatment on July 28, 2004.[1]

By decision dated March 21, 2005, the Office denied appellant's claim, finding that she had failed to establish the fact of injury. The Office noted that the medical evidence was based on an inaccurate history of injury.

On April 19, 2005 appellant requested an oral hearing. On February 15, 2007 she requested a review of the written record in lieu of an oral hearing. By decision dated April 27, 2007, an Office hearing representative affirmed the March 21, 2005 decision on the grounds that the medical evidence did not establish that appellant's back condition was causally related to factors of her federal employment. The Office accepted that appellant worked on a selectee line performing her assigned duties, with only a half hour to sit down at the x-ray machine and hand wanding for 45 minutes, but found that her physicians failed to provide a diagnosis that could be causally related to the identified work activities.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[2]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of 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 or specific condition for which compensation is claimed is

[1] Appellant stated that, on September 9, 2004, she filed a claim for a "hurt chest and right shoulder muscles" while hand wanding.

[2] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

causally related to the employment injury.[3] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[4]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[5] An award of compensation may not be based on appellant's belief of causal relationship.[6] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[7] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[8]

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 that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[9]

ANALYSIS

The Office accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the June 4, 2004 workplace incident occurred as alleged, namely that she worked on a selectee line performing her assigned duties, with only a half hour to sit down at the x-ray machine and hand wanding for 45 minutes. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized

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

[4] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury," as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q)(ee).

[5] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[6] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[7] *Id.*

[8] 20 C.F.R. § 10.303(a).

[9] *John W. Montoya*, 54 ECAB 306 (2003).

medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

Medical evidence submitted by appellant consists of notes and reports from Drs. Allende, Satz and Cruz; notes and reports bearing illegible signatures; and reports of x-rays and MRI scans. None of these reports constitute probative medical evidence.

On June 10, 2004 Dr. Satz noted appellant's complaints of pain in the sacral area for one week, "after doing heavy work." However, he provided no diagnosis and no opinion as to the cause of appellant's condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[10] Similarly, treatment notes for the period June 14 through July 9, 2004 do not contain an opinion as to the cause of appellant's condition; therefore, they are also of diminished probative value. On June 14, 2004 Dr. Satz diagnosed low back sprain and indicated by placing a checkmark in the "yes" box that he believed appellant's condition was caused or aggravated by employment activities. The Board has held that a mere checkmark or affirmative notation in response to a form question on causal relationship is not sufficient to establish a claim.[11] In June 15 and July 9, 2004 "work ability and limitations" reports, Dr. Satz diagnosed lumbosacral sprain and stated that the injury occurred at work on June 4, 2004 while bending, twisting and lifting bags. However, he failed to explain how the work activities described caused appellant's condition. A medical opinion not fortified by medical rationale is of little probative value.[12] Moreover, Dr. Satz' description of the duties performed by appellant on the date of injury was not consistent with those alleged by her in her Form CA-1, wherein she attributed her condition to prolonged standing and hand wanding.

In a July 28, 2004 work excuse, Dr. Allende provided a diagnosis of lumbosacral strain and indicated that appellant was "sick" from July 25 to August 5, 2004. As he failed to address the cause of appellant's condition, this evidence is of limited probative value. Notes from Dr. Allende dated July 28, 2004 reflected that appellant incurred low back pain while working at her job. The Board has long held that pain is a symptom, not a diagnosed condition and that pain without objective physical or diagnostic findings to support a condition causing the pain is not compensable under the Act.[13] Moreover, Dr. Allende did not discuss the employment activities in which appellant was engaged or the physiological process whereby those activities caused her back condition, thereby, diminishing the probative value of the report.

Reports from Dr. Cruz are also insufficient to establish appellant's claim. In an August 3, 2004 work excuse, she provided a diagnosis of "L5 strain" and indicated that appellant was unable to work until August 16, 2004. As Dr. Cruz did not offer any opinion regarding the cause of appellant's condition, her note is of limited probative value.[14] In a "work ability and

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

[11] *See Gary J. Watling*, 52 ECAB 278 (2001).

[12] *George Randolph Taylor*, 6 ECAB 986, 988 (1954)

[13] *See John L. Clark*, 32 ECAB 1618 (1981).

[14] *Michael E. Smith*, *supra* note 10.

limitations" report, dated August 13, 2004, Dr. Cruz diagnosed lumbosacral strain and stated that the alleged June 4, 2004 injury occurred due to "prolonged standing position [with] trun[k] rotation movements and lifting heavy objects." Although Dr. Cruz provided a diagnosis and an opinion as to the cause of appellant's condition, her report offers no findings on examination, no medical background and no rationale explaining the nature of the relationship between appellant's diagnosed condition and the accepted employment incident. Dr. Cruz' cursory opinion without explanation is of diminished probative value.[15] Additionally, the history of injury provided included not only prolonged standing, which was accepted by the Office, but also "lifting heavy objects," which was neither alleged by appellant in her CA-1 nor accepted by the Office. The probative value of Dr. Cruz' report is further diminished by the inaccurate factual background.

The record does not contain an opinion by any qualified physician supporting appellant's contention that her back condition was causally related to the accepted employment activity. While appellant has submitted chart notes and other medical documents which track her treatment, she has not provided a narrative report containing a physician's rationalized opinion on whether there is a causal relationship between her condition and the established June 4, 2004 work incident. The Board notes that appellant submitted notes and reports bearing illegible signatures. These reports do not constitute probative medical evidence, in that they lack proper identification.[16] For reasons stated above, reports of MRI scans and x-rays, which do not contain an opinion as to the cause of appellant's condition are of diminished probative value and are insufficient to establish appellant's claim.

Appellant expressed her belief that her back condition resulted from the June 4, 2004 employment incident. 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.[17] 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.[18] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the work-related incident is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how appellant's claimed knee condition was caused or

[15] *See Brenda L. DuBuque*, 55 ECAB 212 (2004); *see also David L. Scott*, 55 ECAB 330 (2004); *Willa M. Frazier*, 55 ECAB 379 (2004); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[16] *See Merton J. Sills*, 39 ECAB 572 (1988).

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

[18] *Id.*

aggravated by her employment, she has not met her burden of proof to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on June 4, 2004.

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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