United States Department of Labor
Employees' Compensation Appeals Board

LINDA J. KOMOS, Appellant	)	
and	)	**Docket No. 05-1135**
	)	**Issued: August 3, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

Appearances:
Linda J. Komos, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On April 25, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision of December 20, 2004 denying appellant's occupational injury claim. Pursuant to 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 sustained an injury due to conditions of her employment.

FACTUAL HISTORY

On January 19, 2004 appellant, a 44-year-old distribution clerk, filed an occupational injury claim alleging that she experienced sacroiliitis as a result of conditions of her employment. She claimed that her job duties, which included repetitive bending, caused a burning sensation in her lower back. She stated that she first became aware of her condition on November 15, 2003.

In an undated narrative statement received by the Office on January 22, 2004, appellant alleged that, while prepping mail on November 15, 2003, she experienced a burning sensation in her lower back, which required her to leave her duties. She represented that, prior to experiencing the burning sensation, she had been engaged in repetitive bending. Appellant further alleged that for five years she had been working on machinery that required lifting, bending and pushing and that her standing and walking had been limited because of the burning sensation.

The record reflects a letter from the employing establishment dated December 2, 2003 entitled "Denial of Temporary Light Duty." The letter indicates that no work was available to accommodate appellant's medical restrictions.

On January 22, 2004 the employing establishment challenged appellant's claim, contending that she had provided no medical evidence and that there were inconsistencies in her case.

In an unsigned medical note dated January 19, 2004, Dr. Shlomo S. Mandel, Board-certified in the areas of internal and preventive medicine, stated that he had first treated appellant on December 22, 2003.[1] He reported appellant's complaints of pain in her lower back with limitation of motion and activity. Dr. Mandel stated that his examination showed tenderness across the lumbosacral spine; increased paravertebral muscle tension; limited range of motion; and no indication of focal neurological deficits. He opined that, "given the clinical and radiographic findings, it would be difficult for her to return to a position which calls for bending, twisting and lifting. Dr. Mandel did not address the cause of appellant's condition.

By letter dated January 28, 2004, the Office advised appellant that the evidence submitted was insufficient to substantiate her claim and requested additional evidence, including medical evidence which provided a diagnosis and a rationalized opinion as to the cause of her diagnosed condition.

In an unsigned preliminary note dated February 2, 2004, Dr. Mandel indicated that appellant was still experiencing cervical lumbar and lumbosacral pain and tenderness in the junction of the dorsolumbar spine and the lumbosacral region; that she had limited range of motion and guarding, but was neurologically intact; and that his review of a magnetic resonance imaging (MRI) scan revealed spondylosis in the lower thoracic spine and broad-based bulging at L4-5. He stated that, "according to [appellant], her condition is the result of work she performed in the past for the [employing establishment]."

By decision dated March 10, 2004, the Office denied appellant's claim on the grounds that the medical evidence did not demonstrate that her claimed medical condition was causally related to an established work event. The Office specifically found that Dr. Mandel had failed to provide a rationalized medical opinion as to causal relationship.

[1] The above-reference medical form included a statement that it had been electronically signed by Dr. Mandel; however, the form did not contain an electronic signature.

Appellant provided a letter dated March 22, 2004 from her chiropractor, Dr. Eugene J. Jary, reflecting that he had been treating appellant since November 28, 2003 "for injuries sustained while at work on November 15, 2003."

On March 26, 2004 appellant requested an oral hearing.

In a statement dated March 25, 2004, appellant's husband alleged that he had returned home on November 15, 2003 to find his wife in excruciating pain and barely able to walk. In a statement dated March 24, 2005, Beverly Martin, a coworker, claimed that appellant had told her on November 15, 2003 that she had started to feel a burning sensation in her back as she was prepping mail.

In a one-line letter dated March 19, 2004, Dr. Mandel stated that, "in [his] opinion, [appellant's] work at the [employing establishment] could have caused the bulging disc in her lower back."

At the October 27, 2004 hearing, appellant testified that, after experiencing a burning sensation in her back, she reported to the employing establishment's medical unit, after which she went home. She stated her belief that her injury was job related and that, because she had never hurt her back at work prior to November 15, 2003, she considered it to be a "one-time injury." The Office hearing representative informed appellant that she had not provided sufficient evidence to establish a traumatic injury or a causal relationship between her alleged condition and employment conditions. She urged appellant to send additional medical documentation, including notes from her primary care physician relating to care immediately following the alleged injury. She further encouraged appellant to return to Dr. Mandel in an attempt to obtain more evidence supporting a causal relationship between her condition and conditions of employment. The hearing representative advised appellant that she would keep the record open for 30 days in anticipation of receiving additional evidence from appellant.

Appellant submitted an authorization for medical attention dated November 15, 2003, reflecting complaints of "back problems." She also provided a "return to work" letter dated November 25, 2003 signed by Dr. S. Singh, a treating physician, reflecting that she had been seen for musculoskeletal pains and his recommendation that she perform no work at all from November 17 to 25, 2003 and light work only from November 26 to December 15, 2003.

Notes from the employing establishment's health unit indicated that on November 15, 2003 appellant had complained that she had experienced pain in her lower back with a burning sensation for a week, but that the pain had become more intense on November 15, 2003.

On November 16, 2004 the employing establishment challenged appellant's claim on the grounds that appellant's representation to the employing establishment's nurse (pursuant to the chart notes of November 15, 2003) that she had been having back pain for a week prior to the alleged injury, contradicted the allegations in her claim and testimony at the hearing that her pain began on November 15, 2003.

In a statement directed to the Office hearing representative dated November 17, 2004 appellant reiterated her belief that November 15, 2003 was the day her back "bulged out" and

was the day the "straw broke the camel's back." She stated that her type of injury can be caused "by doing the same thing over and over again day in and day out."

By decision dated December 20, 2004, the Office hearing representative affirmed the Office's March 10, 2004 decision on the grounds that the medical evidence submitted was insufficient to establish a causal relationship between a diagnosed condition and appellant's employment duties.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged,[3] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[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 the 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 diagnosed condition is causally related to the employment factors identified by the claimant.[5]

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed was caused by the accepted injury.[6] 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.[7]

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Joseph W. Kripp*, 55 ECAB ___ (Docket No. 03-1814, issued October 3, 2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). "When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury." *See also* 5 U.S.C. § 8101(5) ("injury" defined). Occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q) ("[o]ccupational disease or [i]llness" defined).

[4] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[5] *Michael R. Shaffer*, 55 ECAB ___ (Docket No. 04-233, issued March 12, 2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

[6] *Roger Williams*, 52 ECAB 468, 472 (2001).

[7] *John W. Montoya*, 54 ECAB ___ (Docket No. 02-2249, issued January 3, 2003).

Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship,[8] as are medical conclusions unsupported by rationale.[9] An award of compensation cannot be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.[10]

Section 8101(2) of the Act provides as follows:

> "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the secretary."[11]

ANALYSIS

The Office accepted that appellant engaged in repetitive tasks in connection with her employment duties as a distribution clerk. However, the Office hearing representative found the medical evidence insufficient to establish that she had sustained a condition caused by accepted employment factors.[12] The relevant medical evidence consists of: two sets of notes and a letter from appellant's orthopedist, Dr. Mandel; a letter from her chiropractor, Dr. Jary; and a return to work letter from Dr. Singh. The Board finds that the medical evidence of record does not contain a rationalized medical opinion establishing a causal relationship between appellant's employment duties and her diagnosed condition.

The Board finds that Dr. Jary's March 22, 2004 letter lacks probative value for two reasons. First, a chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.[13] Since there is no evidence of record reflecting a diagnosis of subluxation as demonstrated by x-ray, the Board finds that Dr. Jary is not a physician under the Act and, therefore, his opinion is of diminished probative

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[8] *Ellen L. Noble*, 55 ECAB ___ (Docket No. 03-1157, issued May 7, 2004); *Michael E. Smith*, 50 ECAB 313 (1999).

[9] *Willa M. Frazier*, 55 ECAB ___ (Docket No. 04-120, issued March 11, 2004).

[10] *John D. Jackson*, 55 ECAB ___ (Docket No. 03-2281, issued April 8, 2004); *see also Michael E. Smith*, *supra* note 8.

[11] 5 U.S.C. § 8101(2). *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] The Board notes that the Office hearing representative properly reviewed this case as an occupational injury claim, in that it was filed as an occupational injury claim; there was no evidence supporting a traumatic injury; and the allegations pertained to conditions produced by the work environment over a period longer than a single day. *See* 5 U.S.C. § 8101(5) ("injury" defined). *See also* 20 C.F.R. § 10.5(q) ("[o]ccupational disease or illness" defined).

[13] *Mary A. Ceglia*, 55 ECAB ___ (Docket No. 04-113, issued July 22, 2004).

value. Next, he neither stated a diagnosis with specificity nor offered a reasoned opinion as to the cause of appellant's condition. In his March 22, 2004 letter, Dr. Jary indicated that he had been treating appellant since November 28, 2003 for injuries sustained while at work on November 15, 2003. To the extent that Dr. Jary's comments can be construed to imply a causal relationship, he has failed to explain his opinion.

Dr. Singh's November 25, 2003 return to work letter does not assist appellant's claim, in that it offers no opinion whatsoever as to a causal relationship between appellant's "musculoskeletal pains" and factors of employment. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value.[14]

Dr. Mandel's unsigned notes dated January 19 and February 2, 2004 are also insufficient to establish a causal relationship between appellant's condition and her employment duties. As the Board has consistently held, unsigned treatment notes are of no probative value.[15] Moreover, neither report provided an opinion as to causal relationship. Therefore, for reasons previously stated, they are of diminished probative value. In his notes of February 2, 2004, Dr. Mandel stated that "according to [appellant], her condition is a result of work she performed in the past for [her employer]." However, Dr. Mandel did not express his own opinion. It has been well established that an award of compensation cannot be made on the basis of appellant's unsupported belief of causal relationship.[16]

Finally, Dr. Mandel's March 19, 2004 one-line letter fails to substantiate the existence of a causal relationship. Although he provides an opinion, it is equivocal, is not based on a complete factual and medical background of appellant, and is not supported by medical rationale explaining the nature of the diagnosed condition and the established employment factors. Dr. Mandel's opinion that appellant's work at the [employing establishment] "could have caused the bulging disc in her lower back" is speculative in nature and, therefore, of diminished probative value.[17]

The Office hearing representative advised appellant of the type of medical evidence required to establish her claim; however, she failed to submit such evidence. She failed to provide a rationalized medical opinion to describe or explain how her employment duties caused or aggravated her back condition. Accordingly, the Board finds that appellant has not established that she sustained an injury while in the performance of duty.

[14] *See Ellen L. Noble, supra* note 8.

[15] *See Merton J. Sills, supra* note 11. The Board notes that the January 19, 2004 treatment form contained a typewritten note to the effect that it had been electronically signed; however, no such signature appeared on the form.

[16] *See John D. Jackson, supra* note 10.

[17] *See Ellen L. Noble, supra* note 8.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 20, 2004 is affirmed.

Issued: August 3, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board