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ELAINE DENATALE, Appellant)	
)	
and)	Docket No. 05-1015
)	Issued: October 5, 2005
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE, Holtsville,)	
NY, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
WILLIE T.C. THOMAS, Alternate Judge

On April 25, 2003 appellant, then a 49-year-old tax examiner, filed an occupational disease claim alleging that her back pain and herniated and bulging discs were related to sitting in a chair and repeatedly having to get up to retrieve faxes and to make copies. She stated that she became aware of her relationship to her back pain and her employment on April 1, 2003 when her back was “hurting really bad and [she] could hardly walk or stand up that day.” The record reflects that appellant had been sitting in a chair with worn padding for approximately two

years when she experienced the event of April 1, 2003. She was medically restricted to working four hours a day in April 2003 and started utilizing an ergonomic chair in May 2003. She was terminated from the employing establishment on November 12, 2004.

In support of her claim, appellant submitted March 18 and May 9, 2003 reports from Dr. Mark Gudesblatt, a Board-certified neurologist. In his initial report of March 18, 2003, Dr. Gudesblatt reported a history of back pain since 1994 after being involved in a motor vehicle accident and diagnosed lumbar myofascial pain. In his May 9, 2003 report, Dr. Gudesblatt reported that appellant experienced increased back pain since being “injured at work on April 1, 2003 due to long sitting ... [from] being in an uncomfortable chair.” He advised that the April 2003 lumbar spine magnetic resonance imaging (MRI) scan demonstrated a small disc herniation at L4-5 and L5-S1 and noted that the September 1994 MRI scan had demonstrated bulging disc at L5-S1 and arthritic change at L4-5. Dr. Gudesblatt diagnosed lumbar myofascial pain and disc herniation and opined that appellant could work four hours a day with restrictions. Dr. Gudesblatt continued to provide copies of treatment reports and in a June 10, 2003 report, noted that appellant stated that she developed back pain after sitting on a hard chair for her entire work shift on April 1, 2003. He stated that, although appellant had back discomfort prior to April 1, 2003, there was no other injury, trauma or event that accounted for her worsened pain which occurred that day. Thus, he opined that there was no other reasonable explanation other than back pain aggravated by position and stress forces generated by her workplace environment and chair.

The Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Anthony Puglisi, a Board-certified orthopedic surgeon, for an opinion on the causal relationship of appellant’s back pain. In an August 11, 2003 report, Dr. Puglisi noted appellant’s history of back complaints beginning April 1, 2003 and noted that she stated that she was “no better” despite sitting in an ergonomic chair for the past two and a half months and working only four hours a day. Dr. Puglisi reviewed the medical record, statement of accepted facts and presented his examination findings. He stated that to consider sitting in a chair and being in a sedentary job position which allowed appellant to sit, stand and move about her office to be an aggravating cause of appellant’s complaints would be the same as putting the fault with appellant’s bed, where she lies for eight hours. Thus, he opined it was impossible for him to substantiate a causal relationship to appellant’s chair, the amount of sitting and the up and down movements she performs during the day to the underlying disc herniations or even to the amount of myofascial pain she has. He stated that the reported disc herniations at L4-5 and L5-S1 did not involve the neurological structures of the lumbar spine and as appellant had no complaints of sciatica-like symptomatology, the diagnosis was suspect. Dr. Puglisi further stated that it was difficult for him to identify a relationship between her past back condition and the claimed injury as appellant seemed to say that she did not have any back problems six months after the 1994 car accident, yet Dr. Gudesblatt had stated in his report that she had back pain since that time. Dr. Puglisi stated that he had no specific diagnosis other than low back pain unsubstantiated by objective findings as there were no findings which one might find in a disc herniation. He stated, however, that she had findings suggestive of malingering insofar as there was positive straight leg raising lying down and negative straight leg raising in the seated position. Dr. Puglisi stated that he found no objective basis for her subjective complaints and felt that there was no basis for her continued disability. He stated that, if the chair was the cause of any aggravation of a previous condition, at this point in time, her condition would have improved given the passage of

time, her new chair and the amount of care she had undergone with a chiropractor. He further noted that appellant had been on a narcotic analgesic for a long period without a valid reason and recommended that she undergo physical therapy to strengthen her back and abdominal muscles.

Dr. Gudesblatt continued to submit treatment reports in which he diagnosed lumbar myofascial pain and lumbar disc herniation. He recommended continued narcotic analgesics for pain relief.

By decision dated October 6, 2003, the Office denied appellant's claim for compensation. Determinative weight was accorded to Dr. Puglisi's second opinion examination which found no objective findings to support that her back condition was caused or aggravated by factors of her employment.¹

In a letter dated May 14, 2004, appellant, through her attorney, requested reconsideration of the October 6, 2003 decision. Dr. Gudesblatt continued to submit treatment reports in which he diagnosed lumbar myofascial pain, lumbar radiculopathy and lumbar disc herniation on the basis of objective testing.

By letter dated February 1, 2005, the Office found a conflict in medical opinion existed between Dr. Gudesblatt and Dr. Puglisi with regard to her diagnosis and whether there was a condition or continuing disability due to the April 1, 2003 work incident.² To resolve this conflict, the Office referred appellant, together with the medical record and a statement of accepted facts, to Dr. Edmund A.C. Stewart, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a February 8, 2005 report, Dr. Stewart noted the history of injury and reviewed the medical reports of record. His examination finding of both the cervical and lumbosacral spine were essentially normal with signs of symptom magnification and voluntary subjective loss noted. Dr. Stewart diagnosed status post cervical sprain of August 21, 1994, status post lumbosacral sprain of August 21, 1994, degenerative disc disease of the cervical spine and degenerative disease of the lumbosacral spine. He opined that appellant's current symptomatology related to injuries received in the 1994 automobile accident and that she was capable of working 4 hours a day with no lifting, and 15-pound restrictions on pushing and pulling. Dr. Stewart stated that appellant's lumbar MRI scan from September 1994 to April 3,

¹ The Board notes that the record also contained a May 29, 2003 report from Dr. Raymond E. Bartolo, a chiropractor and a September 22, 2003 report from Dr. Frank S. Segreto, a Board-certified orthopedic surgeon. These reports, however, did not offer an opinion on the causal relationship of appellant's back condition. On December 18, 2003 appellant filed an appeal of the Office's decision. Her appeal was docketed as No. 2004-530. In an order dismissing appeal dated March 31, 2004, the Board dismissed appellant's appeal so that she could request reconsideration before the Office.

² The Office's letter actually referred to an "accepted work injury." However, the record before the Board does not indicate that the Office has accepted that an employment-related injury occurred on April 1, 2003. The Board also notes that the record contained additional reports from Dr. Segreto, Dr. Raphael P. Davis, a Board-certified neurological surgeon, a copy of the September 14, 1994 MRI scan of the cervical spine, an August 31, 1995 report from Dr. Craig H. Lightblau, Board-certified in physical medicine and rehabilitation, a September 1, 2004 treatment report from Dr. Cynthia S. Ochi, a chiropractor, and a December 15, 2004 statement from appellant. The medical reports did not render an opinion on the causal relationship of appellant's back condition.

2003, a period of almost nine years, showed a normal progression from two bulging discs to two small disc herniations. He advised that it was not at all unusual for persons in their late forties to show disc degeneration and small disc herniations. Dr. Stewart further opined that appellant's back condition was in no way related to her sitting in a chair for an eight-hour workday. He noted that the record reflected a recommendation for surgical intervention for appellant's spinal condition in August 1995. In support of his opinion that appellant's employment did not cause her condition, Dr. Stewart opined that, in his 40 years of being actively engaged in orthopedic surgery and having examined over 30,000 back cases, he had never seen a case of disc herniations arise from sitting on one's buttocks for an eight-hour workday absent some extenuating circumstance, such as being involved in airplane ejector seat testing. He further opined that appellant had a problem with her narcotic medication and recommended that her medications be professionally managed by her psychiatrist.

By decision dated March 4, 2005, the Office denied modification of its previous decision, denying compensation benefits. The Office accorded determinative weight to the opinion of Dr. Stewart, the impartial medical examiner, who found appellant's back condition was not causally related to her federal employment.

LEGAL PRECEDENT

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.³

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁴ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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 Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the

³ *Solomon Polen*, 51 ECAB 341 (2000).

⁴ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁶

Section 8123(a) of the Act, in pertinent part, provides: “If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”⁷ Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.⁸

ANALYSIS

In developing the medical evidence, the Office properly found that there arose a conflict in medical opinion evidence between appellant’s treating physician, Dr. Gudesblatt, and the Office referral physician, Dr. Puglisi, with regard to her diagnosis and whether there was any causal relationship and disability due to the identified work factors. Dr. Gudesblatt opined that appellant’s back pain and herniated disc conditions were causally related to the identified work factors and she was only capable of working four hours a day with restrictions. Dr. Puglisi, however, opined that it was impossible to substantiate a causal relationship between appellant’s identified work factors to the purported underlying disc herniations or to the amount of myofascial pain appellant had, and opined that there was no objective basis for her subjective complaints or her continued disability. The Office, therefore, properly referred appellant to Dr. Stewart for an impartial medical examination.

Dr. Stewart provided a reasoned report in which he reviewed the evidence of record and presented his findings upon physical examination. He opined that, other than the objective finding of degenerative disc disease and small disc herniations on appellant’s MRI scans appellant’s current symptomatology, work restrictions and four-hour workday related to the injuries she received in the 1994 motor vehicle accident. Dr. Stewart’s examination found that appellant was basically normal. He also observed signs of symptom magnification and voluntary subjective loss on both the cervical and lumbosacral spine. He found no basis on which to attribute any conditions or symptoms to appellant’s employment.

As the report from the impartial medical examiner, Dr. Stewart, was based on an accurate factual and medical background, and was comprehensive, complete, and well rationalized, based on the absence of physical or objective findings upon examination, it is entitled to that special weight accorded a well-rationalized impartial medical report. As the impartial medical examiner’s report is entitled to special weight, it constitutes the weight of the medical opinion evidence of record and establishes that appellant’s symptoms, back conditions and need to work a four-hour day with restrictions is not causally related to her established work factors.

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

⁷ 5 U.S.C. § 8123(a).

⁸ *See Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

Therefore, based upon the impartial medical report of Dr. Stewart, the Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant failed to establish that her claimed back condition was caused or aggravated by factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 4, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board