

**United States Department of Labor
Employees' Compensation Appeals Board**

PEGGY N. MOORE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Ripley, MS, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 05-1056
Issued: October 18, 2005**

Appearances:

Gregory D. Keenum, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

COLLEEN DUFFY KIKO, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 11, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 23, 2005 denying her claim on the grounds that she had not established an injury causally related to the events of October 9, 2002. 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 met her burden of proof to establish that she sustained an injury in the performance of duty on October 9, 2002.

FACTUAL HISTORY

On October 16, 2002 appellant, a 52-year-old city carrier, filed a traumatic injury claim alleging that on October 9, 2002 she injured her neck and back and experienced right hip and leg pain when she slipped and fell against a door while delivering a parcel. Appellant stopped work on October 10, 2002 and returned to work on October 15, 2002.

In support of her claim, appellant submitted treatment notes dated September 24 through October 18, 2002 from Dr. Carl C. Welch, a Board-certified family practitioner. The entry dated September 24, 2002 notes treatment of a cervical condition prior to the date of injury, the entry dated October 10, 2002 references the history of appellant's claimed work injury and, the entry dated October 18, 2002 contains the diagnosis of herniated nucleus pulposus at the levels L4-5, L5-S1 and C5-6 with mild spinal stenosis. No opinion was provided on the cause of appellant's conditions.

In a November 21, 2002 letter, the Office advised appellant of the type of medical and factual evidence needed to establish her claim.

Appellant submitted responses to the Office's questions. In a December 12, 2002 report, Dr. Welch noted that appellant was seen on October 10, 2002 following a slip on a wet floor and a fall against a door frame, for complaints of pain in the cervical spine and of right sciatica. He stated that the examination revealed no neurological deficit related to the cervical pain and appellant was positive for right sciatic pain with radiation to the foot. He stated that x-rays confirmed disc narrowing at C5/6 and L4/5, with no fracture of compression deformity noted. He advised that magnetic resonance imaging (MRI) scans confirmed a large posterior paracentric right disc protrusion with moderate right-sided neuroforaminal narrowing and mild spinal stenosis at C5/6 and broad-based disc bulges along with uncovetebral hypertrophy at the L4/5 and L5-S1 levels with mild bilateral neuroforaminal narrowing and mild spinal stenosis at L4/5 with mild left-sided neuroforaminal narrowing. In a December 16, 2002 attending physician's report, Dr. Welch diagnosed herniated nucleus pulposus at L5-S1 and C5-6 and indicated by checking a box that there was no history or evidence of concurrent or preexisting disease or physical impairment. By way of a check mark, Dr. Welch opined that appellant's conditions were caused or aggravated by the October 9, 2002 incident.

By decision dated January 13, 2003, the Office accepted that the event of October 9, 2002 occurred as alleged but denied appellant's claim on the grounds that the medical evidence did not establish that her diagnosed medical conditions were caused or aggravated by this incident.

On May 16, 2003 appellant requested reconsideration. She submitted diagnostic copies of testing along with physical therapy reports and progress reports from Dr. Welch. In a February 10, 2003 report, Dr. Allen S. Boyd, Jr., a Board-certified neurosurgeon, noted the history of the October 9, 2002 work injury and presented his examination findings. An impression of cervical spondylosis and bulging disc at C5 and bulging disc at L4 with possible spondylolisthesis and stenosis, post-traumatic was provided.

In a February 10, 2003 report, Dr. Manuel F. Carro, a Board-certified physiatrist, noted the history of injury and presented his examination findings. He diagnosed myofascial pain syndrome in the cervical and lumbar areas, cervical disc protrusion C5-6 on the right side, which might require surgical intervention, lumbar disc protrusion at L4-5 and L5-S1 with cervical and lumbar spondylosis. Additional office notes were also provided. No opinion was provided with regard to the cause of the diagnosed conditions.

In a letter dated September 4, 2003, addressed to Dr. Boyd, the Office noted that appellant had a prior low back injury of September 12, 1994¹ and requested that the physician elaborate on whether appellant sustained a diagnosable injury on October 9, 2002. Dr. Boyd was also requested to provide medical rationale and objective evidence to establish whether any preexisting conditions were aggravated.

By decision dated November 17, 2003, the Office denied modification of the January 13, 2003 decision, finding that appellant had not established causal relationship.

Appellant requested reconsideration of the Office's November 17, 2003 decision. Copies of physical therapy reports and telephone orders were submitted. In a report dated December 3, 2003, Dr. Boyd advised that appellant stated that she had twisted her back on October 9, 2002. He stated that, if that had happened, then that would be an injury on top of any previous trauma she had. Dr. Boyd suggested seeing Dr. Carro's notes for additional history and answers to the Office's questions.

In a report dated May 28, 2004, Dr. Glenn A. Crosby, a Board-certified neurosurgeon, noted the history of injury, physical examination findings and that an MRI scan from 2002 showed lumbar spondylolisthesis at L4-5. He opined that appellant's worsening lumbar spondylolisthesis was aggravated by a work injury. In a June 23, 2004 report, Dr. Crosby noted the results of a June 8, 2004 MRI scan and provided an impression of lumbar spondylolisthesis at L4-5 with foraminal stenosis on the right at L4 with right lower extremity radiculopathy and back pain. In a July 23, 2004 report, Dr. Crosby discussed appellant's progress.

In a September 27, 2004 report, Dr. Welch indicated that he had been appellant's treating physician since 1980 and advised that he has treated appellant for generalized osteoarthritis and fibromyalgia, most severe in the lumbar spine and the left foot, prior to the October 9, 2002 employment incident. There was no discussion of causal relationship between the October 9, 2002 incident and any diagnosed condition.

By decision dated February 23, 2005, the Office denied modification of the November 17, 2003 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation 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 of the Act, 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."² These are the essential

¹ No claim for any other injury is in the record before the Board.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon 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 Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ 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.⁶

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. 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.⁷

ANALYSIS

The Office found that appellant experienced the October 9, 2002 employment incident. However, the Office denied the claim as the medical evidence submitted was insufficient to establish that the October 9, 2002 incident resulted in an injury causally related to any diagnosed condition. Appellant's own statements concerning her back and neck conditions are irrelevant to the main issue of the present case, *i.e.*, whether appellant has submitted sufficient medical evidence to support her claim that she sustained an injury as a result of the October 9, 2002 incident. Appellant was advised of the deficiency in her claim on November 21, 2002 and afforded the opportunity to provide supportive evidence; however, sufficient medical evidence addressing whether any medical condition arose out of the October 9, 2002 incident has not been submitted.

³ *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.*

⁶ *See David M. Ibarra*, 48 ECAB 218 (1996).

⁷ *James Mack*, 43 ECAB 321 (1991).

Appellant submitted reports from Dr. Welch documenting her lumbar and cervical conditions. On December 16, 2002 Dr. Welch opined that appellant's herniated nucleus pulposus conditions at L5-S1 and C5-6 were caused or aggravated by her employment by placing a checkmark in a box marked "yes" on the form report. The Board has held checking a box "yes" on a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.⁸ Although Dr. Welch noted that appellant had no history or evidence of preexisting injury or disease, this appears to be an inaccurate depiction of appellant's medical history as Dr. Welch indicated in a report of September 27, 2004 that appellant had been treated for generalized osteoarthritis in the lumbar spine prior to the October 9, 2002 employment incident. His report did not address whether this preexisting condition was aggravated by the accepted incident.

On February 10, 2003 Dr. Boyd opined that appellant's cervical and back conditions were post-traumatic. He later explained in a December 3, 2003 report that the October 9, 2002 incident would be an injury on top of any previous trauma she had. This statement, however, does not constitute a well-rationalized medical opinion with respect to the issue of causal relationship. It fails to distinguish between any new and preexisting conditions or explain how the October 9, 2002 injury caused an aggravation of any preexisting condition. To establish causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment identified by appellant as causing her claimed condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, explains how these employment factors caused or aggravated appellant's diagnosed condition and present medical rationale in support of his opinion.⁹ Accordingly, Dr. Boyd's reports are insufficient to establish appellant's burden of proof.

On May 28, 2004 Dr. Crosby noted the history of the October 9, 2002 work incident and opined that appellant's worsening lumbar spondylolisthesis was aggravated by a work injury. There is no indication that he was made aware of appellant's medical history regarding her severe lumbar osteoarthritis. This evidence is insufficient to support appellant's claim as Dr. Crosby's report is not based on a complete factual and medical background.¹⁰ Dr. Crosby failed to provide any adequate medical rationale to support his opinion.¹¹ Dr. Crosby did not explain the medical reasons why the employment incident would have caused or aggravated the claimed condition or why her underlying condition were contributed to by the October 9, 2002 employment incident.

⁸ *Donald W. Long*, 41 ECAB 142, 146-47 (1989).

⁹ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

¹⁰ See *Daniel F. O'Donnell, Jr.*, 54 ECAB ____ (Docket No. 02-1468, issued February 28, 2003) (to establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship); *Robert A. Boyle*, 54 ECAB ____ (Docket No. 02-2177, issued January 27, 2003); see also *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

¹¹ *Robert Broome*, *supra* note 9.

On appeal, appellant's counsel asserts that the Office did not properly consider medical evidence showing appellant's disability. To establish a compensation claim, it is essential that appellant submit rationalized medical evidence supporting that any claimed condition or disability is causally related to the accepted employment incident. Merely showing that she is disabled is not sufficient to establish entitlement to compensation under the Act.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on October 9, 2002.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 23, 2005 is affirmed.

Issued: October 18, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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