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ELAINE M. KOLLER, Appellant)	
)	
and)	Docket No. 05-1395
)	Issued: October 11, 2005
U.S. POSTAL SERVICE, POST OFFICE,)	
Sioux City, IA, Employer)	
)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

On June 20, 2005 appellant filed a timely appeal of the January 11, 2005 merit decision of the Office of Workers' Compensation Programs, which denied her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

The issue is whether appellant sustained an injury in the performance of duty.

FACTUAL HISTORY

On August 16, 2003 appellant, a 43-year-old part-time flexible clerk, filed an occupational disease claim for pain in her lower back and left leg and tingling and numbness in her left foot due to frequent repeated bending and lifting.¹

Appellant submitted a note written on a prescription pad dated August 12, 2003 and bearing an illegible signature, reflecting the author's belief that appellant had a work-related back injury and should be restricted from lifting below the waist or above the shoulder and should not lift more than 25 pounds.

By letter dated August 18, 2003, the employing establishment challenged appellant's claim on the grounds that she had failed to provide sufficient medical documentation.

In a note dated July 1, 2003, Dr. Suhair Afana, a Board-certified family practitioner, stated that appellant had low back pain and was able to return to work with restrictions.

By letter dated August 21, 2003, the Office notified appellant that she had not submitted sufficient evidence to establish her claim and requested additional information, including clarification of the employment-related activities she believed contributed to her alleged condition and a rationalized opinion from her physician as to the cause of her condition.

Appellant submitted a December 16, 1988 employment application, a 1990 medical assessment and a 1997 medical report bearing an illegible signature.

A letter dated August 18, 2003 from Michael Olsen of the employing establishment outlined the duties of a part-time flexible employee and indicated that the required duties should produce no injuries.

In an undated narrative statement, which was received by the Office on September 12, 2003, appellant contended that she began to experience back pain shortly after being assigned to a flat sorting machine. She reported that her work required her to reach and lift flats; to twist and turn constantly; to sweep bins down; and to push tubs on conveyor belts. Appellant stated that she had been injured on the job in March 2000, when she had been treated by Dr. David. J. Barnes, a Board-certified family practitioner.

By letter dated October 6, 2003, the Office requested additional information regarding appellant's previous back injury, including her neurosurgeon's report and copies of x-ray and magnetic resonance imaging (MRI) scan reports.

Appellant submitted a report dated September 5, 2003 from Dr. Barnes, who provided a diagnosis of radicular back pain. Having examined appellant on August 12, 2003, Dr. Barnes provided a detailed history of appellant's condition. He indicated that appellant did not recall a

¹ Appellant alleged that she sustained a work-related back injury in approximately March 2000. However, the record does not contain evidence that a claim was filed for such injury.

specific injury, but that she began experiencing pain after she was transferred to the flat-sorting machine, which required her to push and lift bins of mail. Dr. Barnes found no back pain in palpation; fairly good range of motion of the back; some discomfort on straight leg raising at 80 to 90 degrees; deep tendon reflexes 2+ throughout, except for trace to 1+ in the left Achilles; and no obvious weakness or muscle atrophy. He stated that x-rays of the lumbar spine showed some decrease in normal lordosis and that an MRI scan of the lumbar spine showed L4-5 mild broad posterior disc herniation producing mild central canal stenosis with bilateral mild facet hypertrophy and no foraminal encroachment. Dr. Barnes opined that appellant's employment "caused or at least aggravated" her back pain, explaining that appellant's activities at work caused a lot of stress in her lower back and that she did not have a history of prior back problems or a history of activities outside of work that would likely cause her back pain. Dr. Barnes suggested that a neurologist would be able to "provide some further information regarding the likelihood that [appellant's] employment activities caused or worsened her back problems."

By decision dated October 22, 2003, the Office denied appellant's claim on the grounds that there was no medical evidence of a diagnosed back condition or a rationalized medical opinion relating appellant's condition to her federal employment.

Subsequent to the Office's October 22, 2003 decision, appellant submitted additional medical evidence including an August 25, 2003 MRI scan report; August 12, 2003 notes signed by Dr. Barnes reflecting his opinion that nerve impingement was causing appellant's radicular problems; a December 8, 2003 disability slip signed by Dr. Quentin J. Durward, a Board-certified neurological surgeon; a December 8, 2003 duty status report signed by Dr. Durward, which provided diagnoses of displacement of lumbar and low back pain. In a report dated May 24, 2004, he provided a diagnosis of degenerative disc disease at L4-5 with radiculopathy. Dr. Durward opined that lifting and bending at work "exacerbated and may have been the cause of [appellant's] degenerative changes." Notes from Dr. Barnes dated March 16 and 30, 2000 reflected that appellant was being rechecked for lower back pain related to a prior injury. An unsigned report from Dr. Durward dated October 27, 2003 reflected his opinion that appellant's lifting, bending and walking on hard surfaces at work exacerbated her pain at L4-5 level and "may have been the cause of degenerative changes." He also stated that appellant had a history of an injury at the employing establishment in 1998 that had resolved with time and conservative treatment.

By letter dated October 6, 2004, appellant, by her representative, submitted an application for reconsideration.

In support of her request, appellant provided previously submitted medical documents and treatment notes dated May 30, June 13 and July 31, 2003 initialed by Dr. Afana. On May 30, 2003 Dr. Afana related appellant's complaints of lower back pain which occurred after duties associated with her job, including bending, carrying boxes and sorting mail. On July 31, 2003 Dr. Afana reported that appellant's back pain was improving and that she had played golf once or twice. Appellant also submitted an August 13, 2003 report of an MRI scan of the lumbar spine, which reflected early mild degenerative changes at L4-5 and L5-S1, no compression fractures; and well-maintained disc spaces.

By decision dated January 11, 2005, the Office denied modification of its October 22, 2003 decision.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which she claims compensation is causally related to the employment injury.³ In an occupational disease claim, to establish that an injury was sustained in the performance of duty, 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.⁴

ANALYSIS

The Board finds that the case is not in posture for decision regarding whether the employee sustained an injury in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his or her claim. 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 the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁵ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to

² 5 U.S.C. § 8101 *et seq.*

³ 20 C.F.R. § 10.115(e), (f) (1999). *See Gary M. DeLeo*, 56 ECAB ____ (Docket No. 05-1099, issued August 8, 2005). *See also Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁴ *Victor J. Woodhams*, *supra* note 3.

⁵ *See Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); *see also Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁶

Dr. Barnes opined that appellant's employment "caused or at least aggravated" her back pain, explaining that her work activities caused a lot of stress on her lower back. Dr. Durward provided a diagnosis of degenerative disc disease at L4-5 with radiculopathy and opined that lifting and bending at work "exacerbated and may have been the cause" of her degenerative changes. Both physicians gave a history of appellant's condition, reported detailed findings of their examinations of appellant and indicated that they had reviewed appellant's medical records and test results.

The Board notes that, while none of the reports of the employee's attending physicians are completely rationalized, they are consistent in indicating that the employee sustained an employment-related lower back condition and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish the claim on behalf of the employee, they raise an uncontroverted inference between the employee's claimed condition and the accepted employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.⁷

On remand the Office should prepare a statement of accepted facts and refer appellant, along with her medical records, for a second opinion examination, in order to obtain a rationalized opinion as to whether appellant's current condition is causally related to factors of her employment, either directly, or through aggravation, precipitation or acceleration

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty.

⁶ See *Virginia Richard*, *supra* note 5; see also *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

⁷ See *Virginia Richard*, *supra* note 5; see also *Robert A. Redmond*, 40 ECAB 796, 801 (1989).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2005 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action by the Office consistent with this decision.

Issued: October 11, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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