United States Department of Labor
Employees' Compensation Appeals Board

E.C., Appellant	)	
and	)	**Docket No. 07-69**
	)	**Issued: March 27, 2007**
DEPARTMENT OF LABOR, WAGE & HOUR DIVISION, Miami, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 10, 2006 appellant filed a timely appeal of a September 15, 2006 merit decision of an Office of Workers' Compensation Programs' hearing representative denying her claim for a March 16, 2006 work-related injury. 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 a back condition on March 16, 2006.

FACTUAL HISTORY

On March 22, 2006 appellant, then a 49-year-old wage and hour compliance specialist, filed a traumatic injury claim alleging that on March 16, 2006 she injured her low back when her

car tire blew out during work-related travel.[1] The employing establishment confirmed that appellant was on the way to a work-related appointment when her tire blew.

On April 7, 2006 the Office advised appellant that the evidence was insufficient to establish that she sustained an injury or medical condition on March 16, 2006 at work. It asked her to provide additional information, including a medical report with a firm diagnosis, history of injury and a rationalized explanation as to how the reported work incident caused or aggravated the diagnosed condition.

In a March 20, 2006 report, Dr. Pedro J. Carvajal, a Board-certified orthopedic surgeon, noted that appellant presented to the office with "a history of low back pain with radiating pain to the left buttock for the last five days. The pain began insidiously without any history of injuries." Dr. Carvajal provided the results of his physical examination as well as findings from an x-ray of the lumbosacral spine. An impression of lumbalgia with radiculitis and degenerative disc disease was provided. Dr. Carvajal recommended a conservative treatment program with continued Naprosyn, soft lumbosacral corset and a formal physical therapy program. In an April 10, 2006 report, he reported that appellant had full range of motion with no tenderness. Dr. Carvajal also noted that appellant had been working full time and had no permanent impairment.

Physical therapy reports dated March 23 to April 7, 2006 were provided. The plan of treatment for outpatient rehabilitation, which Dr. Carvajal initialed, included a diagnosis of lumbosacral radiculitis with degenerative disc disease. The history of injury or onset of back pain was noted as occurring on March 16, 2006 secondary to blow out and assisting changing a tire.

In the supervisor's portion of an undated duty status report, appellant's supervisor reported that the claimed injury occurred from a "car accident, lower back injury from car movement and for related activity." However, the physician's portion of the report was not completed.

By decision dated May 11, 2006, the Office denied appellant's claim on the grounds that the medical evidence did not establish that the incident on March 16, 2006 caused a medical condition.

On May 16, 2006 appellant requested a review of the written record. She described the March 16, 2006 tire incident and her back pain. In an undated statement, received August 7, 2006, Christine M. Schott, Assistant District Director of the employing establishment, confirmed that appellant was in the performance of duty on March 16, 2006 at the time the tire blew out.

In a May 10, 2006 attending physician's report, Dr. Carvajal noted the date of injury occurring on March 16, 2006. He diagnosed lumbalgia with radiculitis with degenerative disc disease. Dr. Carvajal checked a box "yes" that appellant's condition was employment related,

[1] Denise Fernandez, a coworker, stated on the traumatic injury claim form that appellant called her after the incident occurred to advise her of the incident and to have her contact the employing establishment.

noting that the "patient injured back during working hours." He reported that appellant was partially disabled from March 20 to 27, 2006 and able to resume regular work on March 28, 2006.

By decision dated September 15, 2006, an Office hearing representative affirmed the May 11, 2006 decision.

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.[2] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[3] An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes 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. 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.[4]

ANALYSIS

Appellant alleged that on March 16, 2006 she sustained a back injury after her car tire blew out during work-related travel. The Office accepted that the incident occurred as alleged, but denied the claim on the grounds that she had not established an injury as a result of the incident. The medical evidence does not establish that appellant's claimed back condition is a result of the March 16, 2006 incident.

Dr. Carvajal initially reported in his March 20, 2006 medical report that appellant's back pain began "insidiously" without any history of injury. In the same report, he dated the onset of appellant's symptoms to five days before the examination, or March 15, 2006 not March 16, 2006 as appellant claimed on the traumatic injury claim form. Dr. Carvajal later acknowledged,

[2] *John J. Carlone*, 41 ECAB 354 (1989).

[3] *Shirley A. Temple*, 48 ECAB 404 (1997).

[4] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple, supra* note 3.

through his initials in the plan of treatment for outpatient rehabilitation, that the history of injury or onset of back pain had occurred on March 16, 2006 secondary to blow out and while assisting changing a tire. The probative value of Dr. Carvajal's opinion is diminished by the erroneous date of injury and history reported.[5] Moreover, he did not express how the diagnosed conditions of lumbalgia with radiculitis and degenerative disc disease arose from the March 16, 2006 incident. In a March 20, 2006 report, Dr. Carvajal provided no explanation regarding causal relationship. On May 10, 2006 he checked a box "yes" on the form report indicating that appellant's condition was employment related because she was "injured during working hours." However, the Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[6] Here the only explanation provided is that the claimed injury occurred during working hours. This was insufficient because the physician did not provide rationale, or medical reasoning, to explain how there was a causal relationship between the claimant's diagnosed condition and the tire blow out on March 16, 2006.[7] This is important as the evidence indicates that appellant had preexisting degenerative disc disease at the time of the claimed injury.

Appellant also submitted physical therapy records which were not signed or reviewed by a physician. Therefore, these documents cannot be considered medical evidence.[8]

The Board finds that appellant did not submit sufficient medical evidence to establish that her back condition was related to the accepted March 16, 2006 incident. Therefore, she failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has not established that she sustained a back condition causally related to the May 16, 2006 incident. The medical evidence submitted was insufficient to establish causal relationship.

[5] *See M.W.*, 57 ECAB ___ (Docket No. 06-749, issued August 15, 2006) (medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value).

[6] *Sedi L. Graham*, 57 ECAB ___ (Docket No. 06-135, issued March 15, 2006).

[7] *See supra* note 4 and accompanying text.

[8] *Roy L. Humphrey*, 57 ECAB ___ (Docket No. 05-1928, issued November 23, 2005). *See also* 5 U.S.C. § 8101(2) (this subsection defines physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board