United States Department of Labor
Employees' Compensation Appeals Board

E.T., Appellant	)	
	)	**Docket No. 07-1214**
and	)	**Issued: October 12, 2007**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION FACILITY, Sioux City, IA, Employer	)	

Appearances:
Martin Ozga, Esq., for the appellant
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 April 3, 2007 appellant filed a timely appeal from a January 19, 2007 decision of the Office of Workers' Compensation Programs, denying her claim for an occupational disease. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained an occupational disease in the performance of duty causally related to factors of her employment.

FACTUAL HISTORY

This is the third appeal before the Board in this case. On October 11, 2005 and October 18, 2006 the Board remanded the case for further development of the medical evidence. The October 11, 2005 and October 18, 2006 decisions of the Board are herein incorporated by reference.[1]

On August 16, 2003 appellant, then a 43-year-old part-time flexible clerk, filed an occupational disease claim for low back pain, left leg pain and tingling and numbness in her left foot due to repeated bending and lifting. She stopped work on October 22, 2003 and returned to work on November 27, 2004. By decisions dated October 22, 2003, January 11, 2005 and April 20, 2006, the Office denied appellant's claim on the grounds that the evidence did not establish that her injuries were causally related to her employment.

On November 6, 2006 the Office referred appellant, together with a statement of accepted facts, to Dr. Anil K. Agarwal, a Board-certified orthopedic surgeon. It asked Dr. Agarwal to provide a current diagnosis and a rationalized opinion as to whether she developed an orthopedic condition as a result of her duties as a part-time flexible clerk.

In a November 22, 2006 report, Dr. Agarwal reviewed appellant's medical history and the statement of accepted facts. He noted that appellant was treated for a prior back injury from March 2000 to March 2003. Dr. Agarwal described the physical requirements of appellant's position. He provided findings on physical examination and diagnosed mild lumbar spondylosis, especially at L4-5 and mild spinal canal stenosis, revealed on x-ray. On physical examination, Dr. Agarwal noted normal findings for the lumbar spine except for tenderness to palpation and mildly restricted range of motion. Findings for the thoracic and cervical spine were normal. Examination of the upper and lower extremities was reported as normal. There was no loss of sensation or abnormal sensation in the upper or lower extremities. There was active range of motion against gravity with almost full resistance. Muscle tone was normal. There was no appreciable atrophy in the muscles of the upper or lower extremities. Dr. Agarwal stated:

> "[Appellant] indicates that she has low back pain radiating into the left leg, with tingling into the left foot and toes. By the end of May 2003 the pain in the left leg was so bad she could not sleep. Appellant had low back pain which she described as cramping. Both of these complaints are still present today. Appellant does indicate [that] she had similar symptoms in the past, in March 2000, with regard to her low back. [She] indicates [that] her pain in the low back is intermittent but amounts to about 90 percent of her complaints, while the tingling, numbness and pain down the leg is about 10 percent. The pain is present in the low back and left hip and down the leg. Standing, bending forward and bending backward aggravate the pain, while lying down, sitting and medications help to reduce the

[1] Docket No. 06-1459 (issued October 18, 2006); Docket No. 05-1395 (issued October 11, 2005). The medical evidence previously of record is addressed in the Board's October 11, 2005 and October 18, 2006 decisions.

pain. [Appellant] says the pain is constant and keeps her from sports [and] exercising…. She also feels she has [to] rest a little bit during the day because of her pain and discomfort. At this time she is working with restrictions."

* * *

"The MRI [magnetic resonance imaging scan] shows some disc herniation but [appellant] did not have any nerve root irritation. She has very minimal pain in the left leg … and did not see any physician for treatment for more than two years. [Appellant's] neurological examination of the lower extremities is normal at this visit. She does have some mild limitation of motion of the lower back and some tenderness, with radiological findings of lumbar spondylosis."

* * *

"[Appellant] has lumbar spondylosis due to various factors, including lack of exercise, weight and age, etc. She can do home exercises and use over-the-counter medication and lose weight, at least 20 to 25 pounds."

* * *

"[Appellant] can do full[-]time work, eight hours a day with some restrictions for kneeling and climbing to four hours a day. She can easily lift 35 pounds."

Dr. Agarwal opined that appellant did not develop any orthopedic condition causally related to factors of her federal employment. In a supplemental report dated December 14, 2006, he reiterated that appellant did not develop any orthopedic condition as a result of her duties as a part-time flexible clerk. Appellant's work restrictions were due to her age, weight and other factors unrelated to her employment.

By decision dated January 12, 2007, the Office denied appellant's claim on the grounds that the weight of the medical evidence, represented by the reports of Dr. Agarwal, did not establish a causal relationship between her claimed orthopedic conditions and her 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical evidence.[2] 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 condition and the implicated employment factors. The opinion of the physician must

[2] *Michael S. Mina*, 57 ECAB ___ (Docket No. 05-1763, issued February 7, 2006).

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.[3]

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed injury and her employment.[4] To establish a causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration, as well as findings upon physical examination of appellant and her medical history, state whether the employment factors caused or aggravated her diagnosed conditions and present medical rationale in support of his or her opinion.[5]

ANALYSIS

The Office referred appellant to Dr. Agarwal for a second opinion evaluation. It asked him to provide a current diagnosis and a rationalized opinion as to whether she developed an orthopedic condition as a result of her duties as a part-time flexible clerk. Dr. Agarwal stated that appellant described low back pain radiating into the left leg, with tingling into the left foot and toes. Appellant indicated that her low back pain was intermittent but constituted 90 percent of her complaints, while the tingling, numbness and pain down the leg constituted 10 percent. The pain was present in her low back and left hip and down the leg. Standing, bending forward and bending backward aggravated the pain. An MRI scan showed some disc herniation but Dr. Agarwal indicated that appellant did not have any nerve root irritation. On physical examination, Dr. Agarwal noted normal findings for the lumbar spine except for tenderness to palpation and mildly restricted range of motion. Examination of the upper and lower extremities was reported as normal. Appellant's neurological examination was normal with no loss of sensation or abnormal sensation in the upper or lower extremities. There was active range of motion against gravity with almost full resistance. Muscle tone was normal. There was no appreciable atrophy in the muscles of the upper or lower extremities. Dr. Agarwal diagnosed mild lumbar spondylosis and mild spinal canal stenosis as revealed in x-rays. He opined that these conditions were due to various factors, including lack of exercise, weight and age. Dr. Agarwal stated that appellant did not develop any orthopedic condition as a result of her duties as a part-time flexible clerk.

The Board finds that Dr. Agarwal provided insufficient medical rationale in support of his opinion that appellant's diagnosed orthopedic conditions, lumbar spondylosis and spinal canal stenosis, were caused by her age, weight and a lack of exercise, rather than her job duties. Dr. Agarwal did not provide sufficient medical rationale explaining why appellant's rather strenuous job duties, including continuous lifting and carrying up to 20 pounds, intermittent

[3] *Gary J. Watling*, 52 ECAB 278 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

[4] *Donald W. Long*, 41 ECAB 142 (1989).

[5] *Id.*

lifting and carrying up to 70 pounds, standing or walking for 7½ hours intermittently, 4 hours of bending or stooping intermittently, 2 hours of intermittent twisting, pulling or pushing, pushing up to 600 pounds of weight on wheels a distance of 5 feet 6 times a day, 4 hours of keyboarding and reaching above the shoulder and 8 hours of continuous grasping, could not have caused or aggravated her back conditions. He did not explain why appellant's job duties could not have at least aggravated a preexisting back condition. In fact, Dr. Agarwal noted that standing and bending, two physical requirements of appellant's job, aggravated her back pain. Medical conclusions unsupported by rationale are of diminished probative value.[6] Medical rationale in support of Dr. Agarwal's opinion that appellant's back conditions are not work related, is particularly important in light of the fact that two attending physicians, Dr. David J. Barnes and Dr. Quentin J. Durwood, and an Office referral physician, Dr. Thomas Connolly, opined that appellant's back conditions were either caused or aggravated by her employment duties.[7] When the Office refers appellant for a second opinion examination and the physician's report does not adequately address the issues at hand, the Office has a responsibility to secure a report on the relevant issues.[8]

CONCLUSION

The Board finds that this case is not in posture for a decision. On remand, the Office should further develop the medical evidence to determine whether appellant sustained any injury causally related to her employment duties. After such development as the Office deems necessary, it should issue an appropriate decision.

[6] *Willa M. Frazier*, 55 ECAB 379 (2004).

[7] *See supra* note 1.

[8] *Peter C. Belkind*, 56 ECAB ___ (Docket No. 05-655, issued June 16, 2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 19, 2007 is set aside and the case is remanded for further action consistent with this decision.

Issued: October 12, 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