

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

E.F., Appellant)

and)

DEPARTMENT OF HEALTH & HUMAN)
SERVICES, DISEASE CONTROL CENTER,)
Atlanta, GA, Employer)

Docket No. 08-29
Issued: April 18, 2008

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 1, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 27, 2007 merit decision finding that she failed to establish that she sustained an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issues in this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On January 9, 2006 appellant, then a 50-year-old public health analyst, filed an occupational disease claim alleging that she sustained a low back injury.¹ She indicated that,

¹ The record reflects that appellant actually filed a traumatic injury claim. However, she alleged that the injury occurred over a period of time and the Office determined that her claim should be treated as an occupational disease claim.

from December 15 to 20, 2005, she unpacked files and had to lift and move 29 to 30 boxes. Appellant first became aware of the injury and its relation to her work on December 19, 2005. She stopped work on December 20, 2005.

In support of her claim, appellant submitted disability certificates from Dr. Ruth Donahue, Board-certified in internal medicine. On December 27, 2005 and January 3, 2006 Dr. Donahue advised that appellant was unable to work as of December 27, 2005 and could return on January 9, 2006. The Office also received disability certificates dated February 8 and 20, 2006 from a physician whose signature is illegible, placing appellant off work from February 2 to 10, and through March 2, 2006. Appellant also submitted a nurse's note dated December 20, 2005 and numerous physical therapy reports.

By letter dated May 18, 2006, the Office informed appellant of the evidence needed to support her claim. It requested that she submit additional evidence within 30 days.

In a June 28, 2006 statement, appellant alleged that she was packing boxes that weighed 15 to 30 pounds. She stated that she did not have any prior back disability or symptoms. Appellant stated that she had knee surgery for a torn anterior cruciate ligament in 2000, and a muscle sprain in the neck in 2001. She denied ever having back surgery.

In a February 20, 2006 report, Dr. Tamara Chachashvili, Board-certified in physical medicine and rehabilitation, noted that appellant was seen for complaints of lumbar pain radiating down to both lower extremities. She related that it started in December 2005 and progressively worsened. Dr. Chachashvili noted that appellant related that "she did a lot of packing while she was moving in December of 2005 and that aggravated her back." She diagnosed lumbar pain with associated small disc bulge at L4-5 and facet arthropathy and bilateral lumbar radicular syndrome. Dr. Chachashvili advised that "it could be that she does have some component of a symptom magnification also, at which point I am not sure."

A February 27, 2006 magnetic resonance imaging (MRI) scan of the lumbar spine, read by Dr. Richard Meli, a Board-certified diagnostic radiologist, revealed no evidence of neural foraminal stenosis and no evidence of focal disc herniation. Dr. Meli advised that appellant's MRI scan of the lumbar spine was negative.

In a March 2, 2006 report, Dr. Chachashvili reviewed an electromyogram (EMG) and nerve conduction study of the upper extremities. She indicated that appellant had a lumbar MRI scan. Dr. Chachashvili advised that appellant complained of paresthesias in the arms and legs and lumbar pain radiating down to both legs to the ankles. Appellant related that she had difficulty sitting for prolonged periods. Dr. Chachashvili noted that trigger point injections helped appellant for several days, but then she was "back to square one." On examination, appellant had reduced lumbar range of motion and leg raising elicited back discomfort. Dr. Chachashvili stated that appellant had "increased nonphysiologic distribution of decreased appreciation of light touch in the right leg, entirely overreaction as well as superficial tenderness." She found that the EMG and MRI scan were normal. Dr. Chachashvili diagnosed persistent lumbar pain with associated bilateral radicular syndrome, mild lumbar facet arthropathy at L4-5, and upper and lower extremity paresthesias. She advised that appellant was "interested in keeping herself out of work. I had discussed with the patient that I cannot

substantiate that based on the studies that I have done so far and she understands.” Dr. Chachashvili stated that appellant had difficulty sitting for any prolonged periods of time. She was to give appellant restrictions in regard to that, but appellant stated that she could stand up and walk around anytime that she needed to at work and declined the note. The Office also received physical therapy notes dated from February 13 to April 27, 2006.

By decision dated July 7, 2006, the Office denied appellant’s claim. It found that the medical evidence did not establish that appellant’s back condition was related to established work-related events.

By letter dated June 25, 2007, appellant requested reconsideration. In support of her request, she submitted several progress notes dating from December 20, 2005 to February 8, 2006, from Dr. Donahue, a Board-certified internist. In her December 20, 2005 report, Dr. Donahue noted that appellant related that “she was moving packing and unpacking.” She diagnosed back pain. Dr. Donahue continued to treat appellant and recommended light duty. Appellant also submitted a copy of her June 28, 2006 statement, e-mail correspondence pertaining to continuation of pay, and a copy of an incident report.

By decision dated July 27, 2007, the Office denied modification of the July 7, 2006 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² 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 timely filed within the applicable time limitation period 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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 opinion

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

evidence. 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.⁵

ANALYSIS

The Office accepted that appellant packed and unpacked boxes at work over the course of several days. However, she submitted insufficient medical evidence to establish that she sustained a back condition that was caused or aggravated by these work activities or any other factor of her federal employment.

In support of her claim, appellant submitted several disability certificates and progress notes from Dr. Donahue placing her off work from December 27, 2005 through March 2, 2006. These reports, however, are of limited probative value as Dr. Donahue did not provide any opinion on causal relationship.⁶ On December 20, 2005 she noted that appellant related that "she was moving packing and unpacking" and diagnosed back pain. The Board notes that, while Dr. Donahue related that appellant was moving boxes, she merely repeated appellant's opinion. She did not provide her own specific opinion regarding the cause of appellant's back condition.

In a February 20, 2006 report, Dr. Chachashvili indicated that appellant related a history that "she did a lot of packing while she was moving in December of 2005 and that aggravated her back." She diagnosed lumbar pain with associated small disc bulge at L4-5 and facet arthropathy, and bilateral lumbar radicular syndrome. However, Dr. Chachashvili did not address the cause of the diagnosed conditions or relate the diagnosed conditions to the lifting and packing of boxes at work. Thus, this report is of diminished probative value.⁷ Furthermore, Dr. Chachashvili opined that it appeared that appellant was magnifying her symptoms. In a March 2, 2006 report, she noted that appellant had "increased nonphysiologic distribution of decreased appreciation of light touch in the right leg, entirely overreaction as well as superficial tenderness." Dr. Donahue advised that appellant's EMG and MRI scan results were normal and provided a diagnosis of persistent lumbar pain with associated bilateral radicular syndrome, mild lumbar facet arthropathy at L4-5 and upper and lower extremity paresthesias. Dr. Chachashvili offered no opinion on causal relationship but indicated that appellant was "interested in keeping herself out of work."

Appellant also submitted diagnostic reports dated February 27, 2006. However, these reports merely reported findings and did not contain an opinion regarding the cause of the

⁵ *Id.*

⁶ See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

⁷ See *id.*

reported condition. Appellant submitted nurse's notes and physical therapy reports. Health care providers such as nurses and physical therapists are not physicians under the Act. Thus, their opinions do not constitute medical evidence and have no weight or probative value.⁸

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁹ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁰ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. Appellant has not submitted sufficient medical evidence to establish that moving boxes at work caused or aggravated a diagnosed condition.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.¹¹

⁸ See *Jane A. White*, 34 ECAB 515, 518 (1983). See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

⁹ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁰ *Id.*

¹¹ On appeal, appellant also asserts that she is entitled to continuation of pay. However, she had no entitlement to continuation of pay as she did not establish that she sustained disability caused by a traumatic injury. See 20 C.F.R. § 10.220(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 27, 2007 is affirmed.

Issued: April 18, 2008
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