United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 09-1002**
	)	**Issued: December 3, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Damariscotta, ME, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 6, 2009 appellant filed a timely appeal from July 28, 2008 and January 8, 2009 merit decisions of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant has established that she sustained a back injury in the performance of duty on May 19, 2008 as alleged.

FACTUAL HISTORY

On June 6, 2008 appellant, then a 43-year-old mail carrier, filed a traumatic injury claim alleging that she injured her back on May 19, 2008 by pulling a muscle and having sciatic nerve pain. In an attached statement, she alleged that she pulled a back muscle while lifting a tub of flats.

In an undated report, Dr. Douglas Vander Ploeg, a treating chiropractor, diagnosed sciatica, lumbar sprain/strain and myalgia and myositis. He reported an injury date of May 19, 2008.

In a June 20, 2008 letter, the Office informed appellant that the evidence of record was insufficient to support her claim and advised her as to the type of medical evidence required.

Subsequent to the Office's letter, appellant submitted additional medical reports from Dr. Vander Ploeg dated May 20, June 13, 16, 18, 26, 27 and 30, July 3, 7, 9 and 10, 2008. Dr. Vander Ploeg diagnosed lower back pain and bilateral gluteal pain in the June and July reports. In the May 20, 2008 report, he reported that appellant was treated for plantar fasciitis and diagnosed lumbar strain with bilateral sciatica.

In a July 28, 2008 decision, the Office denied appellant's traumatic injury claim on the grounds that the evidence was insufficient to establish that she sustained a low back condition, finding there was no diagnosed condition.

Appellant subsequently submitted additional reports dated July 23, 28 and 30 and August 1, 2008 from Dr. Vander Ploeg who reiterated his diagnoses of lower back pain, sciatica and bilateral gluteal pain.

In an October 10, 2008 letter, appellant requested reconsideration and submitted medical reports including reports dated June 17, August 4 and October 13, 2008 from Dr. Ellen L. Lee, a treating Board-certified family practitioner, who diagnosed low back pain in her June 17, August 1 and October 13, 2008 reports. Dr. Lee stated that appellant had initially been treated by Dr. Vander Ploeg. In a June 17, 2008 report, she stated that appellant reported that her back pain occurred after lifting something at work. A physical examination on June 17, 2008 revealed a normal appearing lower back, left-sided sacroiliac joint tenderness, left paraspinal spasm, left sciatic notch tenderness and positive straight leg testing. On August 14, 2008 Dr. Lee reported physical findings of negative bilateral straight leg testing, normal gait and tender subcutaneous nodules on palpation. In an October 13, 2008 report, she noted that she found abnormal musculoskeletal findings in her June 17, 2008 report supporting the diagnosis of low back pain. Dr. Lee stated that she believed "this is an acceptable diagnosis code for a work-related injury" and that her "clinical findings are consistent with those of Dr. Vander Ploeg."

By decision dated January 8, 2009, the Office denied appellant's request for modification. It found that she had established a diagnosed condition, but the evidence was insufficient to establish a causal relationship between the diagnosed condition and employment incident.[1]

[1] The Board notes that, following the January 8, 2009 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c); *J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008); *G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007). *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his 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; that an injury was sustained while 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 on a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.[5] First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[6] 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.[7]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[8] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.[9] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[10]

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of the Act. A chiropractor is not

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[2] 5 U.S.C. §§ 8101-8193.

[3] *C.S.*, 60 ECAB ___ (Docket No. 08-1585, issued March 3, 2009).

[4] *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *B.F.*, 60 ECAB ___ (Docket No. 09-60, issued March 17, 2009).

[6] *D.B.*, 58 ECAB ___ (Docket No. 07-440, issued April 23, 2007).

[7] *C.B.*, 60 ECAB ___ (Docket No. 08-1583, issued December 9, 2008); *D.G.*, 59 ECAB ___ (Docket No. 08-1139, issued September 24, 2008).

[8] *Y.J.*, 60 ECAB ___ (Docket No. 08-1167, issued October 7, 2008); *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006).

[9] *J.J.*, 60 ECAB ___ (Docket No. 09-27, issued February 10, 2009).

[10] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.[11]

ANALYSIS

Appellant alleged that she sustained an injury to her back on May 19, 2008 while lifting a tub of flats. She established that the May 19, 2008 incident occurred at the time, place and in the manner alleged. The issue is whether the medical evidence establishes that appellant sustained a back injury as a result of this incident.

The Board finds that appellant has not established that the May 19, 2008 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.[12]

Dr. Lee diagnosed low back pain. She reported that appellant related that she injured her back at work. However, Dr. Lee did not address the relationship of the diagnosed condition to the incident. In her October 13, 2008 report, she stated that her diagnosis of low back pain was appropriate for an employment-related injury. Dr. Lee did not, however, provide the date of the lifting incident or describe how the mechanism of the incident resulted in an injury. Moreover, she did not provide any rationale for her conclusion that her diagnosis was acceptable for an employment-related injury. A physician must provide a narrative description of the specific employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.[13] Thus, these reports are insufficient to meet appellant's burden of proof.

Appellant also submitted reports from Dr. Vander Ploeg, a chiropractor, which are insufficient to establish her claim. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[14] Dr. Vander Ploeg did not diagnose a spinal subluxation based on x-ray. Therefore, his reports are of no probative medical value.[15] The illegible reports do not constitute probative medical evidence. A medical report may not be considered as probative evidence if there is no indication that the person completing the report is a physician as defined at section 8101(2) of the Act.[16]

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[11] *Mary Ceglia*, 55 ECAB 626 (2004). Office regulations define subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae, which must be demonstrated on x-ray. 20 C.F.R. § 10.5(bb).

[12] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[13] *K.E.*, 60 ECAB ___ (Docket No. 08-1461, issued December 17, 2008); *John W. Montoya*, 54 ECAB 306 (2003).

[14] 5 U.S.C. § 8101(2); *see A.O.*, 60 ECAB ___ (Docket No. 08-580, issued January 28, 2009); *Paul Foster*, 56 ECAB 208 (2004).

[15] *See Michelle Salazar*, 54 ECAB 523 (2003).

[16] *R.M.*, 59 ECAB ____ (Docket No. 08-734, issued September 5, 2008).

To meet her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether a medical condition was caused by the employment incident.[17] The issue of whether appellant sustained injury on May 19, 2008 is a medical question which must be established by a physician on the basis of a complete and accurate factual and medical history.[18] Appellant did not submit sufficient medical evidence to establish that the accepted incident at work caused an injury.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on May 19, 2008, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 8, 2009 and July 28, 2008 are affirmed.

Issued: December 3, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[17] *Gary J. Watling*, 52 ECAB 278 (2001).

[18] *Sandra D. Pruitt*, 57 ECAB 126 (2005).