

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

J.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Washington, DC, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 09-134
Issued: May 6, 2009**

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 20, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated October 15, 2008 which denied 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 case.

ISSUE

The issue is whether appellant met her burden of proof in establishing a lower back or neck condition while in the performance of duty.

FACTUAL HISTORY

On July 23, 2007 appellant, then a 29-year-old letter carrier, filed an occupational disease claim alleging that she developed a back and neck condition as a result of performing her work duties which included walking, lifting and carrying. She became aware of her condition on

December 19, 2003 and realized it was caused by her work on July 9, 2007. Appellant stopped work on July 23, 2007.

Appellant submitted a December 16, 2003 return to work certificate, prepared by Dr. Ophnell A. Cumberbatch, a Board-certified internist, who treated appellant from December 11 to 16, 2003 for injuries sustained in a motor vehicle accident. Dr. Cumberbatch advised that appellant could return to work on December 17, 2003 without restrictions. Notes from Diagnostic Imaging Associates, dated February 12 and May 8, 2007, indicated that appellant underwent radiology testing. A February 12, 2002 referral form for a magnetic resonance imaging (MRI) scan of the lumbar spine noted that appellant's history of recurrent low back pain. In a July 3, 2007 report, Dr. Vincent Okeke, a Board-certified internist, noted appellant was treated for recurrent severe low back pain. He recommended appellant take two to three days off intermittently once every one to three months for back pain. Dr. Okeke noted that appellant was on medication for pain and anticipated no additional treatment. In a July 3, 2007 disability slip, he noted that appellant was disabled due to back pain from July 2 to 3, 2007 and was released to work on July 4, 2007. Appellant submitted July 17, 2007 emergency room discharge instructions from Dr. Cameo Cozart, Board-certified in emergency medicine, who prescribed physical therapy for a thoracic-lumbar and shoulder strain. A July 17, 2007 return to work slip from a nurse recommended that appellant return to work with restrictions. Two July 18, 2007 consultation forms from Cignet Health Center referred appellant to an orthopedic surgeon and physical therapist for treatment of chronic back pain.

In a letter dated September 7, 2007, the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed back condition and specific employment factors.

Appellant submitted an undated statement noting her work duties and her history of working at the employing establishment for over six years. She worked as a mail handler from May 2001 to October 2004 and worked as a letter carrier thereafter. A November 7, 2003 emergency room discharge instructions from Dr. Michael Walger, Board-certified in emergency medicine, noted chest wall pain. In a November 7, 2003 disability slip, Dr. Walger noted was appellant disabled until November 10, 2003 and could return to light-duty work with restrictions. Appellant submitted December 9, 2003 emergency room discharge instruction for a motor vehicle accident and neck pain. On December 11, 2003 Dr. Cumberbatch treated appellant in follow up for injuries sustained in a motor vehicle accident. He diagnosed cervical sprain and bronchitis. On October 9, 2007 Dr. Okeke noted a history of recurrent back pain since January 2006. He advised that appellant underwent diagnostic testing, including x-rays and MRI scans, which revealed no abnormalities. Dr. Okeke stated appellant's back pain usually resolved after a few days of rest but was aggravated after working prolonged hours. He noted appellant's history was significant for minor neck, mid-back and rib case strains following a motor vehicle accident in December 2003. Dr. Okeke opined that appellant's recurrent back pain was related to the kind of job she performed which involved casing mail, loading and unloading mail and carrying a mail satchel. He recommended appellant's work be limited to eight hours per day, five to six days per week, casing mail limited to only one route per day and lifting limited to 50 pounds.

In a decision dated November 27, 2007, the Office denied appellant's claim, finding that the evidence was not sufficient to establish that the events occurred as alleged.

On July 23, 2008 appellant requested reconsideration. She submitted notes from Dr. Walger and emergency room instructions from Dr. Okeke previously of record. Emergency room notes dated May 16, 2006 revealed treatment for upper back pain. Appellant was diagnosed with costochondritis and prescribed Tylenol. A chest x-ray dated May 16, 2006, revealed no abnormalities. Appellant submitted an MRI scan of the lumbar spine dated May 8, 2007 which revealed no evidence of disc herniation or central canal stenosis. A May 18, 2007 excuse slip prepared by a Cignet health care professional noted that she could return to work on May 19, 2007.

By a decision dated October 15, 2008, the Office found that appellant performed the work duties as alleged. It denied the claim on the grounds that the medical evidence was insufficient to establish that her back or neck condition was causally related to her work duties.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 the 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. 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.¹

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) 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 claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion 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.²

¹ Gary J. Watling, 52 ECAB 357 (2001).

² Solomon Polen, 51 ECAB 341 (2000).

ANALYSIS

It is not disputed that appellant's duties as a letter carrier and mail handler included prolonged standing and walking, bending, lifting and carrying a mailbag. However, she has not submitted sufficient medical evidence to establish that she has a diagnosed back or cervical condition causally related to her employment factors. On September 7, 2007 the Office advised appellant of the medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from a physician addressing how specific employment factors may have caused or aggravated her claimed condition.

In a return to work certificate prepared by Dr. Cumberbatch dated December 16, 2003, he noted treating appellant from December 11 to 16, 2003 for injuries sustained in a motor vehicle accident. On December 11, 2003 Dr. Cumberbatch treated appellant in follow up and diagnosed cervical sprain and bronchitis. However, his reports are insufficient to establish appellant's claim as the physician attributed appellant's back condition to a motor vehicle accident and not to her work duties. Dr. Cumberbatch addressed cervical injuries sustained in an automobile accident which has not been established as employment related. Therefore, these reports are insufficient to establish appellant's claim.

Appellant submitted a July 3, 2007 report from Dr. Okeke, who treated appellant for recurrent severe low back pain. Dr. Okeke advised that appellant was incapacitated due to back pain from July 2 to 3, 2007. However, he did not explain how appellant's disability was due to her work. On October 9, 2007 Dr. Okeke noted a history of recurrent back pain since January 2006 which was aggravated after working prolonged hours. He advised that appellant's history was significant for minor neck, mid-back and rib case strains following a motor vehicle accident in December 2003. Dr. Okeke stated that appellant's recurrent back pain was related to her job which involved casing mail, loading and unloading mail and carrying a mail satchel. The October 9, 2007 note contains a brief statement on causal relation without sufficient explanation as to the conclusion resolved. Dr. Okeke failed to provide a fully rationalized opinion based on a full review of appellant's history or of prior diagnostic testing.³ Additionally, he failed to address how the 2003 nonemployment automobile accident pertained to her back or neck conditions or how her particular work duties would cause or aggravate her condition resulting in disability in July 2007.

Appellant submitted emergency room discharge instructions for chest wall pain from Dr. Walger dated November 7, 2003, instructions for back pain from Dr. Cozart dated July 17, 2007 and other general discharge instructions dated December 9, 2003. However these reports are insufficient to establish her claim as the physicians do not provide any history of injury or address how appellant's employment activities had caused or contributed to her disability in 2007.⁴ The diagnostic reports, such as the x-rays and MRI scan reports, are insufficient to

³ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁴ *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

establish appellant's claim as they do not provide a physician's opinion on the causal relationship between her job factors and a diagnosed medical condition.

Appellant submitted May 16, 2006 and July 17, 2007 documents from nurses. She also submitted an excuse slip from a Cignet health care professional dated May 18, 2007. However, a nurse is not a physician as defined under the Act and there is no evidence that the document from Cignet is from a physician.⁵ The medical documents not signed by a physician are not probative and do not establish appellant's claim.⁶

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor is the belief that the condition was caused, precipitated or aggravated by his employment sufficient to establish causal relationship.⁷ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she developed an employment-related injury in the performance of duty.

⁵ *G.G.*, 58 ECAB ____ (Docket No. 06-1564, issued February 27, 2007) (nurses are not physicians under the Act and are not competent to render a medical opinion).

⁶ *See* 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

⁷ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 6, 2009
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