United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 09-838**
	)	**Issued: October 15, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Marysville, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 9, 2009 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated August 15, 2008 and a nonmerit decision dated November 12, 2008. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a lower back injury in the performance of duty on May 31, 2008; and (2) whether the Office properly refused to reopen appellant's case for reconsideration of her claim under 5 U.S.C. § 8128.

FACTUAL HISTORY

Appellant, a 49-year-old male carrier, filed a Form CA-2 claim for benefits on June 4, 2008, alleging that she injured her lower back in the performance of duty.

On June 16, 2008 the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked

appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days.

In a June 6, 2008 form report, received by the Office on July 7, 2008, Dr. Michael L. Clark, a chiropractor, indicated that appellant had "positive objective findings" of right-sided subluxation due to an incident which occurred at work on May 31, 2008. He related that appellant's condition was caused by closing a lock box on May 31, 2008 and opined that her subjective complaints were consistent with her objective findings. Dr. Clark checked a box indicating that the described condition was caused or aggravated by employment activity.

In a June 25, 2008 statement, received by the Office on July 7, 2008, appellant indicated that she sustained a back strain while performing her usual duties as a rural carrier on May 31, 2008. She stated that she experienced a sharp pain in my back while servicing a lock box on the street.

By decision dated August 15, 2008, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence in support of her claim that she sustained a lower back leg injury in the performance of duty on May 31, 2008. It noted that appellant had submitted Dr. Clark's June 6, 2008 chiropractic report; however, it found that this report did not constitute medical evidence under section 8101(2) because it did not contain a finding of subluxation based on x-ray.[1]

In a report dated September 15, 2008, Dr. Clark stated that he had previously taken x-rays of appellant's lower back in September 2006. He advised that, because these x-rays showed only soft tissue findings, there was no further need to focus on her lower back as the source of her complaints. Dr. Clark stated that he would have taken additional x-rays if her treatment had slowed or shown no progress; however, this had not occurred.

By letter dated October 21, 2008, appellant requested reconsideration.

By decision dated November 12, 2008, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that 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

[1] The Office stated that, based on the information appellant submitted, it was adjudicating appellant's claim as one for traumatic injury, notwithstanding the fact that she filed a Form CA-2 claim for benefits based on occupational disease.

[2] 5 U.S.C. §§ 8101-8193.

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 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. 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.[5] 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.[6] The medical evidence required to establish causal relationship is usually rationalized medical 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.[7]

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.[8]

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 the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[9] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS -- ISSUE 1

The Office accepted that appellant experienced lower back pain while servicing a lock box on May 31, 2008. However, the question of whether an employment incident caused a personal injury can only be established by probative medical evidence.[10] Appellant has not submitted

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

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

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

[6] *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

[7] *Id.*

[8] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[9] *Id.*

[10] *Carlone*, *supra* note 5.

rationalized, probative medical evidence to establish that the May 31, 2008 employment incident caused a personal injury and resultant disability.

The June 6, 2008 form report from Dr. Clark did not constitute medical evidence pursuant to section 8101(2) of the Act, as it did not contain a diagnosis of subluxation as shown by x-ray. 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 and subject to regulation by the Secretary.[11]

There is no medical evidence of record, therefore, to establish an injury due to the accepted incident. Appellant failed to submit a physician's medical report which explained how medically appellant would have sustained a lower back injury while servicing a lock box. Therefore, she failed to provide a medical report from a physician that explains how the work incident of May 31, 2008 caused or contributed to the claimed lower back injury, and failed to provide a rationalized, probative medical opinion relating appellant's current condition to any factors of her employment. There is therefore no rationalized evidence in the record that appellant's lower back injury was work related.

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Accordingly, appellant did not establish that she sustained a lower back injury in the performance of duty. The Office therefore properly denied compensation for a claimed lower back injury in its August 15, 2008 decision.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.[12] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[13]

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; nor has she advanced a relevant legal argument not previously considered by the Office. The evidence she submitted is not pertinent to the issue on appeal. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[14] As indicated above, the June 6, 2008 report from Dr. Clark did not constitute evidence pursuant to section

[11] *Paul Foster*, 56 ECAB 208 (2004).

[12] 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

[13] *Howard A. Williams*, 45 ECAB 853 (1994).

[14] *See David J. McDonald*, 50 ECAB 185 (1998).

8101(2) because it did not contain a diagnosis of subluxation as shown by x-ray. Following the August 15, 2008 decision, Dr. Clark submitted a September 15, 2008 report in which he noted that he had previously taken x-rays of appellant's lower back in September 2006 but believed it was not necessary to take additional x-rays because the 2006 x-rays only showed soft tissue findings. He advised that his treatment of appellant had demonstrated no lack of progress so there was no further need to focus on the lower back as the source of her complaints. As Dr. Clark's September 15, 2008 report did not include a diagnosis of subluxation as shown by x-ray, it did not constitute medical evidence pursuant to section 8101(2). Appellant has not submitted any new medical evidence which addresses the relevant issue of whether the May 31, 2008 employment incident caused a personal injury and resultant disability. Her reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a lower back injury in the performance of duty. The Board finds that the Office properly refused to reopen her case for reconsideration on the merits of her claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 12 and August 15, 2008 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 15, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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