United States Department of Labor
Employees' Compensation Appeals Board

C.N., Appellant	)	
and	)	**Docket No. 09-1574**
	)	**Issued: February 2, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Deport, TX, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 June 3, 2009 appellant timely appealed the May 4, 2009 merit decision of the Office of Workers' Compensation Programs, which declined to modify a February 25, 2008 decision denying her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on November 17, 2007.

FACTUAL HISTORY

On January 11, 2008 appellant, then a 59-year-old rural carrier associate, filed a claim (Form CA-1) for injury to her head, third and fourth ribs, right shoulder, right arm and right leg. The injury reportedly occurred on November 17, 2007 when the back tire of the motor vehicle she was operating slid into a ditch. Appellant indicated that she was treated at the Paris Regional Medical Center emergency room on November 17, 2007. Although she submitted invoices for

ambulance and emergency room services, as she did not submit any medical evidence regarding the particular diagnoses and treatment she received on November 17, 2007.

By letter dated January 24, 2008, the Office advised appellant that the evidence submitted was insufficient to support her claim. It specifically noted that there was no medical evidence that included a diagnosis of any condition resulting from the November 17, 2007 incident. The Office requested a detailed, narrative medical report from appellant's attending physician. Appellant was afforded 30 days to submit the requested information. However, the Office did not receive any additional information within the allotted time frame.

In a decision dated February 25, 2008, the Office denied appellant's claim because she failed to establish fact of injury. Appellant had not submitted any medical evidence that provided a diagnosis which could be connected to the described employment incident.

On February 26, 2008 the Office received a January 10, 2008 return to work certificate from Dr. Victoria E. Pardue, a family practitioner, who indicated that appellant had been under her care since November 17, 2007 for a "medical condition." Dr. Pardue further noted that it was "unknown" as to when appellant would be able to return to work.

Appellant requested reconsideration on January 30, 2009. The Office received June 24, 2002 and March 25, 2008 magnetic resonance imaging (MRI) scans of the lumbar spine indicating degenerative changes at L3-4 and L4-5. Appellant also provided cervical MRI scans dated September 13, 2005 and October 23, 2008 that revealed multilevel degenerative disc disease.[1] A January 14, 2008 MRI scan of the thoracic spine showed evidence of edema at T1 and T4 suggestive of a compression injury.[2]

Dr. Pardue provided work restrictions on October 11, 2008 and noted that appellant had a permanent disability. She diagnosed degenerative joint disease of the lumbar spine and osteopenia.

In a report dated January 22, 2009, Dr. Curtis W. Cutrell, a Board-certified family practitioner, noted that appellant had ongoing complaints involving her back, thoracic spine and some radiation of pain to the infrascapular regions bilaterally. He also noted that she had recurrent problems involving her neck with radiation of pain and neuropathic profile to the left arm from the distribution of C6-7 primarily. Dr. Cutrell indicated that appellant was involved in a motor vehicle accident on November 17, 2007 and she sustained fractures of the first (T1) and fourth (T4) thoracic vertebra as a result. He further indicated that, based on a comparison of appellant's pre- and post-injury cervical MRI scans, she had multiple levels of disc bulging that she did not have previously. Dr. Cutrell also commented on what seemed to be an exacerbation of a previous cervical injury. He explained that, while appellant had preexisting arthritis, bone spurs and degenerative changes, the accident caused severe exacerbation with resultant problems involving her neck. Dr. Cutrell also stated that she did not "apparently" have the thoracic

[1] The September 13, 2005 cervical MRI scan referenced an injury that reportedly occurred four years prior.

[2] The radiologist noted that the edema suggested an "acute/subacute chronicity."

fractures prior to November 17, 2007. He further noted that the thoracic condition had been an ongoing and limiting factor in appellant's ability to return to any type of work activity.

By decision dated May 4, 2009, the Office denied modification of the February 25, 2008 decision.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[4]

To determine if an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury.[6]

ANALYSIS

Appellant has failed to establish that she sustained an employment-related injury. The medical evidence consists of several MRI scans, a couple notes from Dr. Pardue regarding work restrictions and a January 22, 2009 report from Dr. Cutrell. Either individually or collectively this evidence is insufficient to satisfy appellant's burden of proof. Appellant's various MRI scans do not address the cause of the diagnosed conditions and two of the studies predated the claimed November 17, 2007 injury. Consequently, this evidence by itself does not establish that she has an employment-related cervical, thoracic and/or lumbar condition.[7]

[3] 5 U.S.C. §§ 8101-8193 (2006).

[4] 20 C.F.R. § 10.115(e), (f) (2009); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[5] *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[7] The January 14, 2008 thoracic MRI scan is particularly troublesome and confusing in that the radiologist characterized the noted compression injury as both acute and chronic.

Dr. Pardue's January 10 and October 11, 2008 work restrictions also do not satisfy appellant's burden of proof. Her first note mentioned that appellant had been under her care since November 17, 2007, but it did not include a specific diagnosis. The January 10, 2008 return to work certificate described the nature of appellant's illness as "medical condition." This is not sufficient to establish that she sustained an employment-related injury on November 17, 2007. Dr. Pardue's October 11, 2008 report did not even reference a specific date of injury. Although she diagnosed lumbar degenerative joint disease and osteopenia and identified various work restrictions, her latest submission did not address the cause of the diagnosed conditions or even mention an injury having occurred on November 17, 2007.

Dr. Cutrell is the only physician of record to relate appellant's current cervical and thoracic conditions to her reported November 17, 2007 employment injury. However, other than noting that appellant was involved in a "motor vehicle accident," Dr. Cutrell did not explain how the alleged accident occurred or describe the mechanism of injury. It is not at all clear how she sustained a compression fracture in her thoracic spine or aggravated her preexisting cervical degenerative condition when her back tire reportedly slid into a ditch on November 17, 2007. Dr. Cutrell indicated that appellant's condition was "directly related by time and place." However, a mere temporal relationship will not suffice in this instance. Dr. Cutrell's January 22, 2009 report is speculative at best and cannot be considered a rationalized medical opinion on causal relationship.[8]

The medical evidence of record is insufficient to establish that appellant sustained an employment-related injury on November 17, 2007. Accordingly, the Office properly denied her traumatic injury claim.

CONCLUSION

Appellant has not established that she sustained an injury in the performance of duty on November 17, 2007.

[8] *See Victor J. Woodhams*, *supra* note 4.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2010
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