

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

J.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Charlotte, NC, Employer**

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**Docket No. 10-1002
Issued: February 22, 2011**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 1, 2010 appellant filed a timely appeal from a February 1, 2010 merit decision 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 case.

ISSUE

The issue is whether appellant established that she sustained an injury to her low back in the performance of duty on May 3, 2002.

FACTUAL HISTORY

On May 20, 2002 appellant, a 58-year-old mail handler, filed a Form CA-1 claim for benefits alleging that she strained her low back while trying to pull a tray of letters from a mail sleeve on May 3, 2002.

In a June 1, 2002 report, Dr. William L. Lehman, Board-certified in orthopedic surgery, evaluated appellant for a new work-related injury which occurred on May 3, 2002 when she leaned over and pulled a tray out of a mail sleeve. He stated that appellant had a prior history of

chronic back problems stemming from a 1998 nonwork-related injury. Appellant underwent an L4-S1 discectomy and decompression which improved her back condition until she experienced a flare-up of symptoms which required her to be treated at the emergency room on May 8, 2002. On examination, she had tenderness in the low back in the area of surgical incision, with paraspinous spasm and limited back flexibility in flexion. Appellant also displayed some radicular symptoms and evidence of degenerative disc disease. Dr. Lehman advised that she was currently working light duty six hours a night. He recommended an aggressive program of physical therapy.

In a September 27, 2002 report, Dr. Lehman stated that appellant was still having some difficulties with back pain and remained on light duty. He noted that a magnetic resonance imaging (MRI) scan showed degenerative discs at two levels with no evidence of any recurrent disc herniation or stenosis. Dr. Lehman opined that appellant had degenerative disc disease at the L4-5 and L5-S1 levels.

Dr. Lehman submitted periodic CA-17 forms from 2003 through 2009 which indicated that she was injured on May 3, 2002 while reaching for mail.

In a May 14, 2009 report, Dr. Lehman stated that he was treating appellant for a left distal radius fracture sustained while at home but related to her May 3, 2002 work injury. He opined that the May 2002 employment injury caused intermittent giving way episodes and recurrent falling problems with her right leg, in addition to weakness and pain. Appellant experienced chronic back pain due to her May 3, 2002 work injury. He advised that she should be able to return back to light duty but would have to work in a wheelchair.

In a July 8, 2008 report, Dr. Lehman advised that he had treated appellant for longstanding, persistent problems since 1999. He stated that the May 3, 2002 work injury aggravated her back condition and that appellant had persistent and permanent restrictions in her activities, which included limitations in mobility caused by chronic back and knee difficulties.

On April 20, 2009 Dr. Lehman reiterated his opinion regarding appellant's low back and left leg radiculopathy. He noted that she had provided appropriate CA-17 forms to document her ongoing limitations and work restrictions. Due to her back injury with radiculopathy, appellant had a propensity for recurrent falls, requiring the use of a cane for approximately three years, with progressive problems that required intermittent use of a wheelchair.¹

By letter dated June 19, 2009, the Office advised appellant that she needed to submit additional factual and medical evidence in support of her claim. It provided 30 days to submit the requested information.

By decision dated July 22, 2009, the Office denied appellant's claim, finding that she failed to establish fact of injury. It noted that the instant claim appeared to be for the same condition in which she filed a separate claim for an injury which occurred on May 30, 2001 and that was denied

¹ Dr. Lehman stated that, due to the intermittent instability and pain which subjected appellant to recurrent falls, she had such an episode on or about March 17, 2009. This resulted in a left distal radius fracture which he considered a consequential injury.

on January 29, 2002. The Office instructed appellant that she needed to submit an appeal under that claim and not merely file a new claim for a new injury. It found that the medical evidence lacked sufficient medical rationale to establish that the claimed low back condition was related to the May 3, 2002 incident.

On August 21, 2009 appellant's attorney requested an oral hearing, which was held on November 9, 2009. Appellant submitted an October 4, 2003 electromyogram report.

By decision dated February 1, 2010, an Office hearing representative affirmed the July 22, 2009 decision. She reviewed appellant's prior claim in number xxxxxx256, which contained no contemporaneous medical evidence of treatment for an injury on May 3, 2002.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 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 Office cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place and in the manner alleged, or whether the alleged injury was in the performance of duty.⁷ Nor can the Office find fact of injury if the evidence fails to establish that the employee sustained an "injury" within the meaning of the Act. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and

² 5 U.S.C. § 8101 *et seq.*

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(ee).

⁷ *Pendleton*, *supra* note 3.

circumstances and her subsequent course of action.⁸ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may cause doubt on an employee's statements in determining whether he or she has established his or her claim.⁹

ANALYSIS

In the present case, the Office found that the record contained insufficient evidence to establish that the May 3, 2002 incident occurred at the time, place and in the manner alleged. It noted that appellant had filed a similar claim for an injury of May 30, 2001 that was denied by the Office. The Office found that she did not establish that she sustained the injury in the performance of duty on May 3, 2002.

The Board finds that appellant presented sufficient evidence to establish that the May 3, 2002 incident occurred at the time, place and in the manner alleged.¹⁰ Appellant filed her claim for the May 3, 2002 work incident in a timely fashion, on May 20, 2002, and sought medical attention on June 2, 2002, within one month of the work incident.

The Board has held that an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹¹ Appellant's statement that she pulled a mail tray from a mail sleeve is not contradicted by any documentary evidence in the record. She sought medical attention from Dr. Lehman on June 1, 2002, less than a month after the May 3, 2002 incident and provided Dr. Lehman with a consistent history of leaning over to pull a tray from a mail sleeve as alleged.

The Board finds that the evidence of record is sufficient to establish that she sustained the May 3, 2002 incident in the performance of duty. The employing establishment controverted the claim, contending that she did not experience the incident as alleged on the date in question, but provided no evidence to support its position.

The Board finds, however, that appellant failed to submit sufficient rationalized medical opinion evidence to establish that the May 3, 2002 incident resulted in an injury to her low back. In this regard, 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.¹²

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

⁸ *Joseph H. Surgener*, 42 ECAB 541, 547 (1991); see *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

⁹ See *Constance G. Patterson*, 42 ECAB 206 (1989).

¹⁰ *Id.*

¹¹ *Patterson*, *supra* note 9; *Thelma S. Buffington*, 34 ECAB 104 (1982).

¹² See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹³ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

Dr. Lehman noted that appellant had a preexisting history of a lumbar condition due to a 1998 nonwork-related injury. He advised that she had prior back surgery which improved her back condition until she experienced a flare-up of symptoms in May 2002. Dr. Lehman did not provide a full history of appellant's prior medical treatment or address how her preexisting lumbar condition was aggravated or contributed to by the accepted incident. Rather, he noted only that she experienced back pain for which she sought treatment on May 8, 2002. Appellant demonstrated radicular symptoms and evidence of degenerative disc disease. In a July 8, 2008 report, Dr. Lehman reiterated that he had treated appellant for longstanding, persistent low back problems since 1999 and that the May 3, 2002 work injury aggravated these back problems. He stated that she had chronic back and knee difficulties which created permanent restrictions in her activities. In an April 20, 2009 report, Dr. Lehman reiterated his opinion and noted that appellant had provided medical forms documenting her ongoing limitations and work restrictions. He stated that, due to her back injury and radiculopathy, she was susceptible to recurrent falls which caused additional, progressive deterioration to her low back. On May 14, 2009 Dr. Lehman treated appellant for a left distal radius fracture which she sustained at home; however, he related the fracture to the incident of May 3, 2002. He reiterated that the May 2002 employment injury continued to cause intermittent giving way episodes and recurrent falling problems with her right leg.

The reports from Dr. Lehman are of diminished probative value in that he did not provide adequate medical rationale in support of his conclusions.¹⁴ Dr. Lehman did not adequately describe appellant's medical treatment from 2002 to 2008. The reports of record provide little in the way of findings on physical examination of appellant or cure the deficiencies noted in the medical history of treatment. The work restriction forms provide no narrative medical opinion addressing how the May 3, 2002 incident was competent to aggravate her preexisting lumbar condition or contribute to residual disability on or after that date. The treatment records do not bridge appellant's medical care from June 6, 2003 to March 28, 2007. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁵ Dr. Lehman's reports are not probative on the issue of causal relationship because he did not provide a sufficient explanation addressing how leaning over on May 3, 2002 aggravated appellant's lumbar condition or contributed to further spinal degeneration of the lumbar disc. Appellant failed to provide a rationalized, probative medical opinion relating her current condition to the accepted incident. Therefore, she failed to establish that the work incident of May 3, 2002 caused or contributed to her lumbar condition or contributed to her fall on or about March 17, 2009. The Office properly denied appellant's claim for compensation.

¹³ *Id.*

¹⁴ *William C. Thomas*, 45 ECAB 591 (1994).

¹⁵ *See Anna C. Leanza*, 48 ECAB 115 (1996).

CONCLUSION

The Board finds that appellant established that the employment-related incident of May 2, 2002 occurred as alleged. The Board also finds that she failed to meet her burden of proof to establish that she sustained a low back injury related to the accepted incident.

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2010 decision of the Office of Workers' Compensation Programs be affirmed as modified.

Issued: February 22, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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