United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 10-1477**
	)	**Issued: March 11, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Youngstown, OH, Employer	)	

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 May 5, 2010 appellant filed a timely appeal from an April 14, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act and 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 met her burden of proof to establish that she sustained an injury to her back causally related to factors of her employment.

FACTUAL HISTORY

On June 25, 2009 appellant, then a 53-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she developed back pain and spasms as a result of employment activities due to a prior accepted condition. She first became aware of the

pain in her back and realized she had an employment-related injury on February 27, 2009.[1] Appellant stopped work on February 27, 2009 and returned on March 2, 2009.

In an April 21, 2009 medical report, Dr. Thomas Gemma, an osteopathic specialist, noted that appellant had lower back surgery 15 years prior and had a progressive increase in pain and stiffness over a two-year period, resulting in immobility. He stated that a March 13, 2009 magnetic resonance imaging (MRI) scan revealed disc dehydration at L4-L5 with loss of height and a small posterior annular tear of the disc with some retrolisthesis of L4-L5 and L5-S1. Dr. Gemma recommended caudal epidural steroid injections under fluoroscopic guidance to the L4-L5, L5-S1 interspace.

In medical reports dated May 22, 2009, Dr. Michael Frangopoulos, Board-certified in family medicine, reported that appellant had been under his care for several years due to an October 27, 2003 work-related injury. He reevaluated appellant in February 2009 for increased back pain, spasms and discomfort. Dr. Frangopoulos noted spondylolysis L4-L5 and L5-S1, diagnosing lumbar strain with chronic back pain from a work-related condition. He reported that an MRI scan of appellant's back showed no progression of disease from 2006 to March 2009 and that he was awaiting results from appellant's May 15, 2009 bone scan. Dr. Frangopoulos stated that appellant's lumbar strain was a recurrence of her original injury, noting she had no acute inciting incident. He recommended a caudal epidural block by Dr. Gemma and limited appellant to six-hour workdays.

By letter dated July 16, 2009, the Office advised appellant of the deficiencies in her claim, requesting additional factual and medical evidence. It specifically noted that she had not claimed any new or continued work factors on her new Form CA-2 and had also filed a Form CA-2a claim for recurrence under xxxxxx393.[2]

By letter dated August 14, 2009, Dr. Frangopoulos stated that he had no further information to add to appellant's claim. In a report dated June 22, 2009, he diagnosed lumbar strain from a work-related condition with chronic back pain. Dr. Frangopoulos stated that appellant's continued spasms, pain and discomfort resulted from her earlier injury. He recommended continued epidural management with Dr. Gemma.

By decision dated August 24, 2009, the Office denied appellant's claim, finding that the evidence was insufficient to establish an injury as alleged, or to identify work factors in her new occupational disease claim.

On September 3, 2009 appellant, through her attorney, requested an oral hearing before an Office hearing representative. She submitted a letter dated August 17, 2009 from Dr. Frangopoulos stating that he would no longer provide medical care for her.

[1] Appellant contends that she had an accepted back injury from October 27, 2003 which had been previously resolved, claim number xxxxxx393.

[2] The Office advised that if appellant was claiming a recurrence then she should pursue her claim under her prior CA-2a claim xxxxxx393; however, if she alleged that a new back condition developed over a period of time she should provide supporting documentation under this claim xxxxxx741.

At a February 12, 2010 hearing, appellant testified that she started having back problems in 1992 and had surgery as a result, but then reinjured her back in 2003. She testified that she did not trip, fall, slip or get hit, but her constant workday activities of standing, dragging sacks of mail, waiting on people, lifting, bending and twisting caused her back problems to become noticeable about two years prior. Based on the recommendation of Dr. Frangopoulos, she had restricted herself to a six-hour workday, received caudal blocks and was administered three shots in her back, all without success. Appellant retired on October 31, 2009. The record was held open for 30 days.[3]

By decision dated April 14, 2010, the Office hearing representative affirmed the August 24, 2009 decision as modified. While appellant had provided enough evidence to identify her factors of employment, the medical evidence was insufficient to establish that her back condition was causally related to factors of her federal employment.[4]

LEGAL PRECEDENT

An employee seeking benefits under the 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.[6]

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[7] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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) a factual

[3] During the hearing, appellant stated that she had also filed for recurrence of a claim, number xxxxxx769. Her counsel stated that there had been a hearing on December 11, 2009 for her recurrence claim and that the claim on appeal before the Board in this case was filed as a new injury.

[4] Following the Office's April 14, 2010 decision, appellant submitted additional new evidence to the Board on appeal. As this evidence was not before the Office at the time of its final decision, the Board may not review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

[5] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[6] *Michael E. Smith*, 50 ECAB 313 (1999).

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

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 the employee.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence.[9] 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 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. This medical opinion must include an accurate history of the employee's employment injury, and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[10]

ANALYSIS

The Office accepted that appellant performed the duties of a mail processing clerk as alleged. The issue is whether she established that the accepted employment activities caused or contributed to her back condition. The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a back injury causally related to factors of her employment as a mail clerk.[11]

On March 13, 2009 diagnostic testing was obtained by Dr. Gemma and the MRI scan of appellant's back revealed disc dehydration at L4-L5 with loss of height and a small posterior annular tear of the disc with some retrolisthesis of L4-L5 and L5-S1. Dr. Gemma recommended caudal epidural steroid injections. While he diagnosed appellant's back condition, he did not explain how her condition was due to her employment activities as a mail clerk. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12] Without medical reasoning explaining how appellant's employment factors caused her back condition, Dr. Gemma's report is insufficient to meet appellant's burden of proof.[13]

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

[9] *D.U.*, 61 ECAB ___ (Docket No. 10-144, issued July 27, 2010).

[10] *James Mack*, 43 ECAB 321 (1991).

[11] *See Robert Broome*, 55 ECAB 339 (2004).

[12] *C.B.*, 61 ECAB ___ (Docket No. 09-2027, issued May 12, 2010); *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009).

[13] *C.B.*, 60 ECAB ___ (Docket No. 08-1583, issued December 9, 2008).

In medical reports dated May 22 through August 14, 2009, Dr. Frangopoulos noted that appellant was having increased back pain, spasms and discomfort showing spondylolysis L4-L5 and L5-S1. He diagnosed a lumbar strain and chronic back pain from a work-related condition. Dr. Frangopoulos noted appellant's medical history, stating that she had been under his care for several years due to an October 27, 2003 work-related injury. The MRI scan of appellant's back showed no progression of disease from 2006 to March 2009 and she had no traumatic incident which might have caused this injury. Dr. Frangopoulos reported that appellant's lumbar strain was a recurrence of her original injury and recommended continued epidural management with Dr. Gemma, limiting her to six-hour workdays.

The Board finds that the opinion of Dr. Frangopoulos is not well rationalized. While briefly noting a history of appellant's back condition, Dr. Frangopoulos did not set out adequate detail pertaining to appellant's prior treatment and failed to explain how appellant's work activities contributed to or aggravated her lumbar condition. Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.[14] Dr. Frangopoulos' report failed to set out a clear explanation of the causal connection of appellant's lumbar strain to her factors of employment as a mail clerk and, therefore, is of diminished probative value.

Dr. Frangopoulos' report did not support appellant's claim for a new occupational injury because it suggested that her back injury was a recurrence of her earlier injury.[15]

Appellant alleged that her accepted duties as a mail clerk caused her back condition. Her statements however, do not constitute the medical evidence necessary to establish causal relationship. Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[16] Appellant's belief that her condition was caused by the work-related exposure is not determinative.

The record does not contain a rationalized medical report explaining how appellant's lumbar strain resulted from her employment factors as a mail clerk.[17] As previously noted, the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its decision. On that record, appellant failed to provide evidence to prove that her lumbar strain was causally related to factors of her federal employment and therefore, failed to meet her burden of proof.

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[14] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[15] *Supra* note 3.

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

[17] Evidence submitted by appellant after the final decision cannot be considered by the Board, although she may submit new evidence, along with a request for reconsideration directly to the Office. 20 C.F.R. § 501.2(c)(1).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her lumbar strain is causally related to factors of her employment as a mail clerk.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 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