

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

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A.W., Appellant)	
)	
and)	Docket No. 11-802
)	Issued: November 4, 2011
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
St. Louis, MO, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 11, 2011 appellant filed a timely appeal from two Office of Workers' Compensation Programs' (OWCP) merit decisions dated October 20, 2010 and January 24, 2011 denying her claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act (FECA)¹ 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 has met her burden of proof to establish that her hernia condition is causally related to a July 1, 2008 employment incident, as alleged.

FACTUAL HISTORY

On July 18, 2010 appellant, then a 50-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained a hernia as a result of heavy lifting and carrying

¹ 5 U.S.C. § 8101 *et seq.*

mail while in the performance of duty on July 1, 2008. In a July 27, 2010 attending physician's report, Dr. Joel Hammond, a Board-certified general surgeon, diagnosed inguinal hernia. He indicated that appellant had not previously had a hernia and opined that it was not caused or aggravated by the employment activities described. Dr. Hammond reported that he performed surgery to repair the hernia on June 30, 2010.

By letter dated August 11, 2010, OWCP requested additional factual and medical evidence in support of the claim. It allotted 30 days for appellant to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted an unsigned duty status report and an undated narrative statement. In the narrative statement, she described her daily duties and indicated that she developed a hernia on July 1, 2008 when she began to feel pain in her right groin area as she was lifting her tub to set up for her deliveries that day. Appellant reported that she had a lump in the right groin which became worse as she lifted her tubs at work.

In an August 4, 2010 medical report, Dr. Hammond excused appellant from work until after her appointment on August 12, 2010. He indicated that her exact back to work day would be determined at that time.

In a September 20, 2010 letter, the employing establishment concurred with appellant's allegations and attached a position description and the physical requirements of a city carrier. It indicated that she was allowed a 30-minute lunch and two 15-minute breaks at work.

By decision dated October 20, 2010, OWCP administratively changed appellant's claim from an occupational disease claim to a traumatic injury claim and denied it on the basis that the evidence submitted was insufficient to establish fact of injury. It found that the medical evidence was not sufficient to establish that a medical condition was diagnosed in connection with the July 1, 2008 employment incident, as alleged.

On November 9, 2010 appellant requested reconsideration and submitted additional evidence.

Appellant submitted a June 30, 2010 operative report documenting her right inguinal hernia repair surgery by Dr. Hammond.

In a November 2, 2010 report, Dr. Hammond stated that he had been treating appellant since January 19, 2010. He opined that it was possible that her right groin hernia was work related, although he did not obtain information from her at her initial visit to verify that possibility.

By decision dated January 24, 2011, OWCP affirmed, as modified, the October 20, 2010 decision. It found that although the described employment activities occurred as alleged and a firm diagnosis was provided, the medical evidence did not establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury³ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the compensable 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.⁶

ANALYSIS

OWCP has accepted that the employment incident of July 1, 2008 occurred at the time, place and in the manner alleged. The issue is whether appellant’s hernia condition resulted from the July 1, 2008 employment incident. The Board finds that appellant did not meet her burden of proof to establish a causal relationship between the condition for which compensation is claimed and the July 1, 2008 employment incident.

² 5 U.S.C. §§ 8101-8193.

³ OWCP’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁴ *T.H.*, 59 ECAB 388 (2008). See *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

On July 27, 2010 Dr. Hammond diagnosed inguinal hernia and opined that it was not caused or aggravated by the employment incident. On November 2, 2010 he opined that it was possible that appellant's right groin hernia was work related, although he did not obtain information from her at her initial visit to verify that possibility. A medical opinion on causal relationship does not have to be one of absolute certainty, but it must be one of reasonable medical certainty and not speculative or equivocal in nature.⁷ The opinion should be expressed in terms of a reasonable degree of medical certainty.⁸ Dr. Hammond's opinion that it was possible that appellant's right groin hernia was employment related is vague, speculative in nature, and not fully rationalized. Although the Board finds that Dr. Hammond did provide a firm diagnosis, he failed to directly address the issue of causal relationship as he did not explain how the mechanism of the July 1, 2008 employment incident caused or aggravated appellant's condition. For these reasons, Dr. Hammond's reports are of limited probative value and not sufficient to establish that appellant sustained an employment-related injury in the performance of duty on July 1, 2008.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the July 1, 2008 employment incident, she has failed to meet her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not submitted sufficient rationalized medical opinion evidence to establish that the July 1, 2008 employment incident was causally related to the hernia condition.

⁷ See *Leonard J. O Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

⁸ See *supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2011 and October 20, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 4, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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