United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 11-581**
	)	**Issued: October 12, 2011**
U.S. POSTAL SERVICE, POST OFFICE, South Hamilton, MA, Employer	)	

Appearances:
Appellant, pro se
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 December 17, 2010 appellant filed a timely appeal from a November 16, 2010 decision of the Office of Workers' Compensation Programs (OWCP) that denied her claim. 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 sustained an injury in the performance of duty on September 16, 2009.

FACTUAL HISTORY

On January 14, 2010 appellant, then a 49-year-old distribution clerk, filed a traumatic injury claim, alleging that on September 16, 2009 she injured her right shoulder, neck and upper back when the top shelf of a post com fell on her back. She did not stop work. In support of her

[1] 5 U.S.C. §§ 8101-8193.

claim, appellant submitted a number of physical therapy notes. In a September 21, 2009 report, Dr. William Medwid, Board-certified in family medicine, advised that appellant reported that a metal cage fell onto her back and neck at work and described ongoing symptoms of pain in the right shoulder and neck. Cervical spine examination demonstrated muscle spasms with decreased range of motion. Pain was present on examination of the thoracic spine with tenderness to palpation of the thoracolumbar region. Dr. Medwid diagnosed back pain. A September 23, 2009 thoracic spine x-ray demonstrated no fracture, mild narrowing of the T8-9 disc and minimal endplate spurring at multiple levels.

In an April 21, 2010 letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim and informed her of the additional evidence needed. Appellant submitted a physical therapy order form in which Dr. Medwid diagnosed neck pain and additional physical therapy notes.

By decision dated June 3, 2010, OWCP found that the incident occurred on September 16, 2009 as claimed but that the medical evidence did not establish that appellant sustained a neck, shoulder or upper back condition causally related to the work incident.

On June 8, 2010 appellant requested a review of the written record. In a June 7, 2010 report, Dr. Medwid reported the history of injury and noted that she was seen in his office on September 21, 2009 with spasms of the right trapezius. He reviewed the x-ray findings and that appellant had physical therapy. Appellant also submitted additional physical therapy notes.

In a November 16, 2010 decision, OWCP's hearing representative affirmed the June 3, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[2]

OWCP regulations, at 20 C.F.R. § 10.5(ee) 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.[3] To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical

[2] *Gary J. Watling*, 52 ECAB 278 (2001).

[3] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[4]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[6] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7]

ANALYSIS

The evidence supports that the September 16, 2009 employment incident occurred as alleged. The Board, however, finds that the medical evidence of record is insufficient to establish that appellant sustained injury to her neck, right shoulder or upper back due to this incident.

The September 23, 2009 thoracic spine x-ray did not provide any opinion on the cause of any diagnosed condition. 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.[8] The physical therapy notes do not constitute competent medical evidence as a physical therapist is not a physician as defined under FECA.[9]

Dr. Medwid's September 21, 2009 report indicated that appellant had symptoms of right shoulder and neck pain and muscle spasms on cervical spine examination. He diagnosed back pain. In the physical therapy orders, Dr. Medwid diagnosed neck pain and his June 3, 2010 report reiterated the findings of his September 21, 2009 examination. He did not provide any discussion of how the September 16, 2009 incident caused injury to appellant's right shoulder,

[4] *Gary J. Watling, supra* note 2.

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[6] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[7] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[8] *Willie M. Miller*, 53 ECAB 697 (2002).

[9] *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Section 8102(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2).

back and neck. Dr. Medwid did not address how this incident caused or aggravated any other diagnosed medical condition. His reports are therefore insufficient to meet appellant's burden to establish that she sustained a diagnosed condition caused by the September 16, 2009 employment incident.

Appellant did not submit sufficient medical evidence to establish that she sustained a diagnosed condition caused by the September 16, 2009 employment incident. She did not meet her burden of proof.[10]

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 did not establish that she sustained an injury causally related to the September 16, 2009 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 12, 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

[10] *Gary J. Watling, supra* note 2.