

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA K. ANDREWS and U.S. POSTAL SERVICE,
POST OFFICE, Chillicothe, OH

*Docket No. 03-780; Submitted on the Record;
Issued July 24, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant established that she sustained an injury in the performance of duty, as alleged.

On September 19, 2001 appellant, then a 34-year-old clerk, filed a claim for a traumatic injury, alleging that on September 15, 2001 she was in a motor vehicle accident and sustained injury. Appellant stopped working on September 17, 2001 and has not returned to work.

In a statement dated October 3, 2002, appellant stated that on September 15, 2001 she was instructed to take the mail by car to another post office and she was hit by another car while driving. Appellant stated that her head "felt like it was going to burst," and she experienced pain in her back, neck and shoulders. She stated that she was pregnant and started bleeding through the night. Appellant stated that she experienced spotting blood, pain throughout her body, whiplash and back injury. She stated that she had pain during and after pregnancy for her neck, back, leg, shoulders, arms and wrists.

In a note dated September 17, 2001, appellant's treating physician, Dr. Lyndon B. Gaines, a Board-certified obstetrician and gynecologist, stated that appellant was under his care for her pregnancy and that, after his examination that day, he was placing her off work for two weeks, due to muscular and skeletal pain which was directly related to the motor vehicle accident on September 15, 2001. In a narrative report also dated September 17, 2001, Dr. Gaines performed a physical examination and diagnosed lower abdominal and pelvic pain, "most likely due to musculoskeletal minor trauma in a minor motor vehicle accident."

In a note dated October 5, 2001, Dr. Laurel A. Kirkhart, a Board-certified obstetrician and gynecologist, stated that appellant was "to be off work for the duration of her pregnancy due to complications from a car wreck."

An x-ray of the cervical spine dated October 8, 2001 showed straightening of the normal cervical lordosis but was otherwise negative.

In a note dated October 8, 2001, Dr. Todd S. Rubley, a chiropractor, stated that he had treated appellant since September 5, 2001, following an automobile accident on August 22 and September 16, 2001. He stated that appellant had neck and low back pain and was also having complications with her pregnancy. A September 16, 2001 disability note from the Holzer Medical Center of Jackson stated that appellant had abdominal pain and could work with restrictions.

By decision dated October 30, 2001, the Office of Workers' Compensation Programs denied appellant's claim, stating that the medical evidence was not sufficient to establish that appellant's condition was caused by the September 15, 2001 motor vehicle accident.

By letter dated October 27, 2002, appellant requested reconsideration of the Office's decision and submitted additional evidence.

Dr. Michael J. D'Amato, an orthopedic surgeon, considered appellant's history of injury, performed a physical examination and reviewed magnetic resonance imaging (MRI) scans of her cervical and lumbar spine. In a report dated October 25, 2002, he stated that, regarding appellant's cervical and lumbar complaints, "they appear to be most related to muscle strain and spasm which should respond to further therapy, local modalities and anti-inflammatory medication." Regarding appellant's wrists, he stated that she had some nerve conduction findings consistent with carpal tunnel syndrome bilaterally.

In a note dated October 25, 2002, Dr. Kirkhart stated that appellant was involved in an automobile accident on September 15, 2001. She stated that appellant was pregnant and sustained whiplash injury to the neck, mid and low back pain. Dr. Kirkhart stated that the x-rays showed a bulging disc, that appellant had preterm labor and postpartum pre-eclampsia.

In a report dated October 30, 2002, Dr. Kirkhart stated that appellant experienced pain during her pregnancy which continued postpartum. She stated that appellant related the back pain to her car accident on September 15, 2001. Dr. Kirkhart stated, however, that she was an "OB/GYN, not a physiatrist, and [was] not going to state diagnosis nor cause and effect about the back pain." She stated that appellant had preterm contractions, and had to have labor induced, second degree pregnancy-induced hypertension.

In a report dated October 31, 2001, Dr. Rubley stated that appellant presented in his office on September 5, 2001 following a motor vehicle accident, and he diagnosed cervical thoracic and lumbar strain following a motor vehicle accident. Dr. Rubley stated that appellant last visited him on September 9, 2001, and he diagnosed carpal tunnel syndrome post pregnancy. He stated that appellant stated that she experienced pain while she was pregnant following her motor vehicle accident. Dr. Rubley stated that appellant was presently at maximum medical improvement due to the fact that the carpal tunnel syndrome would decrease as her swelling decreased post pregnancy. He stated that appellant was able to work without restrictions.

An MRI scan of the cervical spine dated August 9, 2002 showed no evidence of a herniated disc and mild disc bulge. A July 15, 2002 MRI scan of the lumbar spine also showed no herniated disc and mild narrowing of the intervertebral discs at L5-S1.

In a report dated December 11, 2002, Dr. Gaines stated that he had seen appellant on several occasions during her pregnancy. He stated that on September 17, 2001 she came with complaints of abdominal, pelvic and low back pain associated with a recent automobile accident. He stated that, at that particular appointment, he told appellant not to work for two weeks due to the musculoskeletal strain that she sustained in the accident, not for the pregnancy.

By decision dated January 17, 2003, the Office denied appellant's request for modification.

The Board finds that appellant did not establish that she sustained an injury in the performance of duty, as alleged.

An employee seeking benefits under the Federal Employees' Compensation 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 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.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

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.³ 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.⁴

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. 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.⁵

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁴ *Id.*

⁵ *Ern Reynolds*, 45 ECAB 690, 695 (1994); *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

In this case, Dr. Rubley's reports are not probative because Dr. Rubley is a chiropractor and her reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist.⁶ While Dr. Kirkhart stated in her October 5, 2001 and October 25 and 30, 2002 reports that appellant was injured in the September 15, 2001 automobile accident and sustained whiplash injury to the neck, mid and low back pain, in her October 30, 2002 report she stated that she was an obstetrician and gynecologist, and would not state the cause and effect of appellant's back pain. Her opinion is therefore of diminished probative value.⁷ In his October 25, 2002 report, Dr. D'Amato stated that appellant's cervical and lumbar complaints appeared to be most related to muscle strain and spasm and diagnosed that appellant had carpal tunnel syndrome but did not relate these conditions to appellant's employment. His opinion is therefore also of diminished probative value.⁸

In his September 17, 2001 narrative report, Dr. Gaines stated that appellant's lower abdominal and pelvic pain was "most likely" due to musculoskeletal minor trauma in a minor motor vehicle accident. The Board finds Dr. Gaines' report to be speculative and therefore of diminished probative value.⁹ In his September 17, 2001 note, Dr. Gaines stated that he placed appellant off work for two weeks due to muscular and skeletal pain which was directly related to the September 15, 2001 motor vehicle accident. In his December 11, 2002 report, Dr. Gaines stated that appellant complained of abdominal, pelvic and low back pain associated with a recent automobile accident and that his prescription for appellant not to work for two weeks was due to the musculoskeletal strain she sustained in the accident, not the pregnancy. Dr. Gaines, however, did not provide a rationalized medical opinion explaining how appellant's musculoskeletal strain resulted from the automobile accident. The Board has held that a medical report lacking medical rationale is of diminished probative value.¹⁰ Since appellant did not present evidence sufficient to establish a causal connection between her medical condition and the September 15, 2001 automobile accident, she has failed to establish her claim.

⁶ See *Cheryl L. Veal*, 47 ECAB 607, 608 (1996). The history related in the report also mentioned an August 22, 2001 automobile accident which was not discussed in the other medical reports of record.

⁷ See *Michael E. Smith*, 50 ECAB 313, 316 n. 8 (1999).

⁸ *Id.*

⁹ See *William S. Wright*, 45 ECAB 498, 504 (1994).

¹⁰ *Caroline Thomas*, 51 ECAB 451, 456 n. 10 (2000); *Annie L. Billingsley*, 50 ECAB 210, 213 n. 20 (1998).

The January 17, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 24, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member