United States Department of Labor
Employees' Compensation Appeals Board

CHARLENE R. TAYLOR, Appellant	)	
and	)	**Docket No. 04-1156**
	)	**Issued: August 30, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Capitol Heights, MD, Employer	)	

Appearances:
Charlene R. Taylor, pro se
Office of Solicitor, for the Director,

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 29, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated January 6, 2004 which denied modification of a March 14, 2003 Office decision.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), 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 9, 2002.

[1] The record contains an August 19, 2003 decision which denied appellant's claim for wage-loss compensation from April 5 to June 3, 2003. However, appellant is not appealing this decision. Furthermore, appellant's claim was denied; therefore, she would not be entitled to compensation.

FACTUAL HISTORY

On October 8, 2002 appellant, then a 42-year-old automation clerk, filed a notice of traumatic injury claim (Form CA-1) alleging that on September 9, 2002 while loading mail, she was reaching and felt pinching and pulling in her lower left back. Appellant stopped work on September 22, 2002.[2] The employing establishment indicated on the reverse side of the form that appellant reported her injury late. Accompanying her claim, appellant submitted a copy of a light-duty position which she had accepted on August 4, 2002 and personal statements dated September 13 and October 8, 2002. In her statements, appellant described the incident that occurred on September 9, 2002. She also submitted an August 22, 2002 duty status report pertaining to a June 3, 2001 injury, an appointment slip and disability certificates from Dr. David C. Johnson, a Board-certified orthopedic surgeon, excusing her from work on September 13, 2002 and disabling her from September 20 to October 3, 2002.

By letters dated October 25, 2002, the Office advised appellant that additional factual and medical information was needed. The Office explained that a physician's opinion explaining how the injury resulted in the diagnosed condition was crucial to her claim and allotted appellant 30 days within which to submit the requested information.

In treatment notes dated September 13 and 23, 2002, Dr. Johnson diagnosed low back pain and noted that appellant's past medical history was unchanged from July 18, 2002.

By decision dated November 26, 2002, the Office denied appellant's claim on the grounds that she did not establish fact of injury. The Office found that appellant had established the occurrence of the claimed September 9, 2002 employment incident but failed to establish a diagnosed condition resulting from the employment incident.

By letter dated December 3, 2002, appellant requested reconsideration of the Office's November 26, 2002 decision and submitted additional evidence, some of which was previously submitted. In a magnetic resonance imaging (MRI) scan read by Dr. Lawrence M. Cohen, a Board-certified diagnostic radiologist, he concluded that appellant had a tiny leftward lateral disc herniation at L4-5 which extended into the left neural foramen. In an October 3, 2002 report, Dr. Johnson diagnosed a herniated nucleus pulposus at L4-5 laterally with left-sided lumbar radiculitis. In an October 21, 2002 report, Dr. Johnson diagnosed lumbar disc syndrome with mild lumbar radiculitis. In a November 11, 2002 attending physician's report, Dr. Johnson diagnosed lumbar radiculitis and low back pain and indicated that this was an aggravation of appellant's workers' compensation injury of June 3, 2001. He advised that appellant was totally disabled from September 20 to November 21, 2002. In a November 25, 2002 report, Dr. Johnson diagnosed a herniated nucleus pulposus L4-5 on the left, with residual symptoms. Additionally, a disability slip from Dr. Johnson, which was undated, indicated that appellant was totally incapacitated from November 21 to December 13, 2002.

[2] The record reflects that appellant has an accepted claim for lumbar strain for an injury that occurred in June 2001, for which she was placed on a light-duty assignment.

In a November 1, 2002 report, Dr. Alison F. Henderson, a chiropractor, indicated that appellant was a normal healthy female prior to her accident on September 9, 2002. She diagnosed lumbar sprain secondary to trauma, lumbar segmental dysfunction and lumbar myalgia with sciatica on the left leg.

By letter dated February 24, 2003, the Office requested information from the employing establishment regarding the duties of appellant's position. The Office advised the employing establishment that a response was required within seven days or appellant's allegations would be accepted as factual. No response was received.

By decision dated March 14, 2003, the Office found that fact of injury was established; however, the Office determined that there was no medical evidence which related the herniated disc and lumbar radiculitis to the September 9, 2002 work injury. The Office modified the November 26, 2002 decision in part to show that fact of injury was established.

In a February 20, 2003 report, Dr. Henderson indicated that appellant could perform her light duties including filing, typing on the computer and her window clerk duties. She advised that appellant could not do any lifting or twisting, flat sorting or letter sorting, machine duties, or prolonged sitting without intermittent standing for more than six hours at a time. She indicated that appellant had a prior history of back pain related to a prior work injury and advised that appellant was able to maintain her pain levels and work as a window clerk for many years without chiropractic care and physiotherapy. Dr. Henderson indicated that appellant should not work unless the restrictions were implemented into appellant's schedule.

Appellant filed Form CA-7's for wage-loss compensation from February 6 to March 11 2003 and April 5 to June 3, 2003.

By letters dated May 14, June 30 and July 17, 2003, the Office advised appellant that there was no medical evidence to establish that she was totally disabled from working. The Office requested that appellant submit additional supportive factual and medical evidence.

In a disability certificate dated February 21, 2003, Dr. Michael D. Cannaday, Board-certified in internal medicine, noted that appellant was incapacitated from February 21 to 24, 2003 and had recovered to resume a normal workload.

In a March 11, 2003 report, Dr. Henderson repeated her previous diagnoses and indicated that appellant should not return to her previous position unless her restrictions were implemented.

In an April 30, 2003 disability certificate, Dr. Henderson diagnosed lumbar herniated disc and indicated that appellant was disabled from April 30, 2003.

By decision dated August 19, 2003, the Office denied appellant's claim for wage-loss compensation from April 5 to June 3, 2003 on the grounds that appellant had not provided sufficient medical evidence to establish that she was disabled.

By letter dated September 22, 2003, appellant requested reconsideration of the decision dated March 14, 2003 and enclosed additional evidence. She included a statement, excerpts from an article on the back and a duplicate of Dr. Henderson's November 1, 2002 report. Additionally, she submitted a September 17, 2003 report, in which Dr. Henderson explained that in September 2002 appellant was using a mail sorter and reinjured her lower back while doing a twisting and lifting motion. She indicated that the disc was already compromising nerve roots, the additional pressure and repetitive twisting and lifting motion caused further pressure, injuring the nerve root to exhaustion. The physician advised that prolonged standing, lifting and twisting would cause a weakened or strained spine to become herniated as in appellant's case. Dr. Henderson opined that it was impossible to tell if the June 2001 injury or the September 2002 injury was the direct cause of the herniated disc; however, she indicated that both events had a cumulative effect, which culminated in the herniated disc.

In a decision dated January 6, 2004, the Office denied appellant's claim on the grounds that the evidence of record was insufficient to warrant modification.[3]

LEGAL PRECEDENT

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 limitations 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."[4] 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.[5]

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.[6] 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 this can be established only by medical evidence.[8] An employee may establish that an

[3] The Office noted that Dr. Henderson provided a diagnosis; however, she was a chiropractor and had not provided evidence that she had corrected a subluxation as diagnosed by x-ray.

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

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

[6] *Neal C. Evins*, 48 ECAB 252 (1996).

[7] *Michael W. Hicks*, 50 ECAB 325, 328 (1999).

[8] 5 U.S.C. § 8101(5); 20 C.F.R. § 10.5(ee) (1999) (defining injury).

injury occurred in the performance of duty but fail to establish that his or her disability or resulting condition was causally related to the injury.[9]

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 the belief that the condition was caused, precipitated or aggravated by her employment is sufficient to establish a causal relationship.[10] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[11] A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.[12] Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors.[13]

ANALYSIS

In the instant case, the Office denied appellant's claim because appellant had not submitted evidence causally relating the diagnosed herniated disc or lumbar radiculitis to the September 9, 2002 work injury.

While appellant submitted several reports from Dr. Johnson, they were not sufficient as the doctor did not provide a rationalized opinion explaining the nature of the relationship between appellant's diagnosed condition and the specific employment factors identified by appellant. The record contains numerous disability certificates from Dr. Johnson dating from September 13 to December 13, 2002 indicating appellant was incapacitated and unable to work. However, Dr. Johnson did not provide any diagnosis or an opinion causally relating appellant's

[9] *Earl David Seal*, 49 ECAB 152, 153 (1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

[10] *Robert G. Morris*, 48 ECAB 238, 239 (1996).

[11] *Id*.

[12] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[13] *Id.*

employment activities to her condition.[14] In his February 21, 2002 report, Dr. Cannaday also indicated that appellant was incapacitated; however, he failed to provide any diagnosis or opinion causally relating appellant's employment activities to her condition.[15] Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16]

Appellant subsequently provided reports from Dr. Henderson, a chiropractor, in which she determined that appellant's employment injuries had a cumulative effect and resulted in a herniated disc. Section 8101(2) of the Act provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary."[17] Section 10.5(bb) of the implementing federal regulations provides:

> "The term 'subluxation' means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to individuals trained in the reading of x-rays.[18] A chiropractor may interpret his or her x-rays to the same extent as any other physician defined in this section."[19]

Thus, where x-rays do not demonstrate a subluxation, a chiropractor is not considered a "physician," and his or her reports cannot be considered as competent medical evidence under the Act.[20] In this case, the record does not indicate that a subluxation of the spine was diagnosed. Therefore, Dr. Henderson's reports cannot be considered those of a physician and are of no probative value.

Appellant also submitted an article on back conditions. Newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and a claimant's federal employment as such materials are of general application and are not determinative of whether the specific condition claimed is related to particular employment factors or incidents.[21]

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[14] It is appellant's burden of proof to submit a physician's rationalized opinion on the issue of whether there is a causal relationship between his diagnosed condition and the implicated employment factors. *Marilyn D. Polk*, 44 ECAB 673 (1993).

[15] *Id.*

[16] *See* footnote 5.

[17] 5 U.S.C. § 8101(2).

[18] 20 C.F.R. § 10.5(bb).

[19] *Carol A. Dixon*, 43 ECAB 1065 (1992).

[20] *See Thomas W. Stevens*, 50 ECAB 288 (1999); *see also Susan M. Herman*, 35 ECAB 669 (1984).

[21] *Gloria J. McPherson*, 51 ECAB 441 (2000).

In the instant case, the Office advised appellant of the type of medical evidence required to establish her claim; however, she failed to submit such evidence. Appellant did not provide a rationalized medical opinion to describe or explain how her back condition was caused by factors of her federal employment. As appellant has failed to submit any probative medical evidence establishing that she sustained an injury in the performance of duty, the Office properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 6, 2004 is hereby affirmed.

Issued: August 30, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member