United States Department of Labor
Employees' Compensation Appeals Board

ROSETTA McFIELD, Appellant	)	
and	)	**Docket No. 04-1226**
	)	**Issued: August 16, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Pine Bluff, AK, Employer	)	

Appearances:
Rosetta McField, 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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 6, 2004 appellant filed a timely appeal from a February 13, 2004 merit decision of the Office of Workers' Compensation Programs, denying her claim for a low back injury and a March 24, 2004 decision, denying her request for reconsideration pursuant to 5 U.S.C. § 8128(a). Pursuant to 5 U.S.C. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit and nonmerit decisions in this case.

ISSUES

The issues are: (1) whether appellant established that she sustained a low back injury in the performance of duty on August 28, 2003; and (2) whether the Office properly denied her March 10, 2004 request for reconsideration without conducting a merit review.

FACTUAL HISTORY

On August 28, 2003 appellant, then a 40-year-old letter carrier, filed a claim for traumatic injury alleging that on that day she sustained an injury to her lower back when she picked up

trays of mail and loaded them into a truck. She stopped work that day, but returned to work the next day.

In a report dated August 28, 2003, a supervisor stated that appellant called to advise that she was bringing her route back because her back was hurting and that she did not hurt it on the job. She later stated that her back hurt when she was picking up trays of mail. In a report dated August 29, 2003, a supervisor stated that appellant advised that, while she was bending over to retrieve mail trays out of a buggy, she hurt her back.

By letter dated September 11, 2003, the Office advised appellant that the information submitted in her claim was not sufficient to determine whether she was eligible for benefits. The Office advised her regarding the additional medical and factual evidence needed to support her claim, including the submission of a medical report providing a diagnosis and a description of her symptoms, a history of injury to her back, test results, prognosis and period and extent of disability and a physician's opinion as to whether her diagnosed condition was caused by her federal employment.

In a report dated August 28, 2003, Dr. Lester Alexander, an attending Board-certified family practitioner, checked "yes" to a question that appellant's injury was causally related to her employment, noting that she leaned over to retrieve mail from a buggy causing muscle spasms and pain. He diagnosed a lumbar strain and released her to limited duty effective that date. On September 2, 2003 Dr. Alexander stated that appellant still had muscular spasms based on her lumbar strain and noted restrictions. On September 3, 2003 appellant accepted a limited-duty assignment within medical restrictions. On September 9, 2003 Dr. Alexander returned appellant to light duty. In a report dated September 15, 2003, Dr. Francis Henderson, a specialist in occupational medicine, stated that he examined appellant in a follow-up appointment that day for lumbar myositis. Appellant related pain of 4 on a scale of 10 particularly when lifting. However, Dr. Henderson noted that appellant did not "demonstrate significant pain." He noted that she could return to increasing activities with a lifting restriction up to 50 pounds overall and up to 15 pounds for intermittent lifting. In a separate report that day, Dr. Henderson checked a box "no" indicating that appellant's history of injury did not correspond to her claim. On September 22, 2003 Dr. Alexander continued appellant's light-duty status.

By decision dated October 24, 2003, the Office denied appellant's claim for low back injury on the grounds that the medical evidence failed to establish that the condition was caused by her August 28, 2003 work-related incident.

On November 11, 2003 appellant requested a review of the written record and submitted a report dated August 28, 2003 from Dr. Alexander, who related that appellant had pain in her low back when she leaned over to retrieve some mail from a buggy. As she straightened up, she felt a sharp pain in the lumbar area which continued. The pain was made worse by straightening up and by hyperextension of the spine as well as rotation or lateral bending. Dr. Alexander noted that there was no radiation of the pain to the buttocks or legs and no neurological symptoms. On examination he noted tenderness to palpation of the lumbar paravertebral muscles with spasm on the right side. Appellant had pain with rotation of the trunk or with lateral bending and with forward bending to 50 degrees. Straight leg raising was positive for back pain but no leg pain between 45 to 50 degrees with either leg. Appellant had no weakness of the lower extremities

and her neurological examination was normal. Dr. Alexander diagnosed lumbar strain and placed her on light duty. In a report dated September 2, 2003, he noted pain with bending and twisting and tenderness of the lumbar paravertebral muscles and pain with straight leg rising. He added that appellant had no radicular symptoms. Dr. Alexander continued him on light duty for another week. On September 29, 2003 Dr. Henderson stated that appellant's injury corresponded to her work-related claim. He also noted that she could return to full-time work. In a report dated October 15, 2003, Dr. Alexander stated that appellant's lumbar strain had resolved and that she was released to return to regular work.

By decision dated February 13, 2004, an Office hearing representative affirmed the October 24, 2003 decision, finding that the evidence of record failed to establish that the diagnosed condition was causally related to her August 28, 2003 work incident.

On March 10, 2004 appellant requested reconsideration. On March 24, 2004 the Office denied her request for reconsideration on the grounds that it neither raised substantive legal questions, nor included new and relevant evidence and, therefore, was insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

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.[1] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[2]

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 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. The weight of medical evidence is determined by its reliability, its probative

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

[2] *See* 20 C.F.R. § 10.110(a); *Betty J. Smith*, 54 ECAB ___ (Docket No. 02-149, issued October 29, 2002).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[3]

ANALYSIS -- ISSUE 1

The Office accepted that the August 28, 2003 incident occurred as appellant alleged. However, she has the burden of proof to establish that her diagnosed condition was caused by the August 28, 2003 work-related incident. In an August 28, 2003 report, Dr. Alexander, a Board-certified family practitioner, diagnosed a lumbar strain and placed appellant on light duty. Although he related that her injury was caused when she bent over her buggy to retrieve mail and noted symptoms including continuous pain in the lumbar area, he failed to provide a rationalized medical opinion establishing the causal relationship between appellant's conditions and the August 28, 2003 employment incident. The physician did not fully explain the medical process by which bending over to retrieve mail would cause or contribute to a lumbar strain. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.[4]

Further, Dr. Alexander's September 2 and October 15, 2003 reports also failed to establish a causal relationship between her lumbar strain and her employment. Both reports essentially updated appellant's status, noting that she had returned to light duty with no radicular symptoms and that she had returned to regular work and experienced occasional pain. An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.[5]

Similarly, Dr. Henderson's September 15, 2003 report stated that appellant's injury occurred on August 28, 2003 but provided no medical rationale to support appellant's assertion.[6]

In form reports dated August 28 and September 2, 9 and 22, 2003, from Dr. Alexander and September 29, 2003 from Dr. Henderson, both physicians noted by checking a box "yes" that the history of injury provided by appellant corresponded to the history provided by the employing establishment. To the extent that these statements support causal relationship, the Board has held that, when a physician's opinion supporting causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is not sufficient to establish a causal relationship.[7] Because appellant failed to submit a well-reasoned medical opinion explaining how the August 28, 2003 incident caused or contributed to his diagnosed medical conditions, she has failed to establish the critical element of causal relationship and has not met her burden of proof.

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[3] *Joan F. Burke*, 54 ECAB ___ (Docket No. 01-39, issued February 14, 2003).

[4] *Caroline Thomas*, 51 ECAB 451 (2000).

[5] *Calvin E. King*, 51 ECAB 394 (2000).

[6] *Id.*

[7] *Gary J. Watling*, 52 ECAB 278 (2000).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,[8] the Office's regulation provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.[9] Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the requirements listed in section 10.606(b), the Office will deny the application for review without reviewing the merits of the claim.[10]

ANALYSIS -- ISSUE 2

In her letter requesting reconsideration, appellant asserted that she submitted all the information to her doctor and that he would answer questions. While appellant's letter makes it clear that she does not agree with the Office's February 13, 2004 decision in her case, she did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law; or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). In addition, as appellant did not submit any new evidence in support of her request for reconsideration, she is not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(2).

As appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a point of law or fact not previously considered by the Office; or to submit relevant and pertinent new evidence not previously considered by the Office, the Office properly refused to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that appellant has not established that her low back condition was caused by the employment-related incident on August 28, 2003. The Board further finds that, with respect to the Office's March 24, 2004 decision denying reconsideration, the Office properly refused to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

[8] 5 U.S.C. § 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

[9] 20 C.F.R. § 10.606(b)(2).

[10] 20 C.F.R. § 10.608(b); *Jaja K. Asaramo*, 55 ECAB ___ (Docket No. 03-1327, issued January 5, 2004).

ORDER

IT IS HEREBY ORDERED THAT the March 24 and February 13, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 16, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member