United States Department of Labor
Employees' Compensation Appeals Board

THALIA MASON, Appellant	)	
and	)	**Docket No. 04-465**
	)	**Issued: May 25, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Dallas TX, Employer	)	

Appearances:
Jeffrey P. Zeelander, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On December 15, 2003 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 13, 2003, which denied appellant's claim on the basis that fact of injury was not established. Pursuant to 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 met her burden of proof to establish that she sustained an injury in the performance of duty on June 11, 2003.

FACTUAL HISTORY

On June 11, 2003 appellant, a 43-year-old letter carrier, filed a traumatic injury claim alleging that as she entered the building at 9:15 a.m. she injured her groin muscle from walking. She also experienced back pain and cramps due to the amount of walking and sitting involved in her light-duty assignment at the guard shack. Appellant was taken by ambulance to a hospital at 11:40 a.m. the same day and did not return to her light-duty position. The record reflects that appellant's duties at the guard shack were to monitor one of three guard stations, check all

incoming traffic for proper identification, record all contract and employing establishment employees on a daily log, report any suspicious activities and monitor all telephone calls with telephones and two-way radios. The limited-duty position required minimal lifting, standing for four hours and sitting for four hours.

The record indicates that the Office had previously accepted, under claim number 160181835, the conditions of lumbar sprain, left hip sprain and a consequential condition of avascular necrosis of both hips. Also approved by the Office were a bilateral femoral head decompression in June 1994, a left hip replacement surgery in 1997 and a right hip replacement surgery in January 2000. The record indicates that appellant had been on the periodic roll for approximately 10 years under claim number 160181835 and started the light-duty assignment at the guard shack on June 11, 2003.

In a June 11, 2003 statement, Grady Nolen, safety officer, described his 6:35 a.m. conversation with appellant and noted his observations of her walking without her cane from the break area at 8:20 a.m. and through the building and out to the parking lot at 9:30 a.m. He stated that at approximately 11:00 a.m, he was told that appellant wanted to file an injury claim as she had groin pain from walking and back spasms from sitting. At approximately 11:40 a.m., appellant was taken by ambulance to the hospital.

On July 9, 2003 the Office informed appellant that the evidence of record was insufficient to support her claim and advised her how to remedy the deficiencies in the evidence claim.

Appellant advised that she experienced a strain or tear in her left hip due to excessive and continuous walking the morning of June 11, 2003. On July 15, 2000 the Office received appellant's July 8, 2000 statement, in which she indicated that she spent at least four hours sitting, standing and walking from the work area back to the building. Appellant stated that because of excessive walking, her preexisting medical condition changed and she sustained a strain or tear in her left hip. She indicated that previous magnetic resonance imagining (MRI) scans and bone scans did not detected this condition until after she had returned to work.

A June 11, 2003 report from the emergency department of Harris Methodist Hospital indicated that the radiologist did not see any fracture or dislocation of appellant's hip prosthesis. Appellant was told to remain off work for two days, decrease the amount of time walking and follow-up with her orthopedic surgeon.

In a June 12, 2003 report, Dr. Richard A. Marks, a Board-certified orthopedic surgeon, noted that since his last evaluation of appellant, she had been working eight-hour shifts at a guard point at the airport and that the combination of relatively constant sitting and/or standing with lengthy traverses to the restroom facilities caused her to be markedly more symptomatic in the back, left buttock and left lower extremity. He stated that given appellant's lumbar pathology and her definitive bilateral hip pathology and shoulder problems, appellant could not return to work unless it was in a totally sedentary position.[1]

[1] Copies of earlier progress reports dated March 28 and May 23, 2002 from Dr. Marks were submitted.

In a June 18, 2003 report, Dr. Michael Taba noted that appellant went back to work against his advice and the advice of Dr. Marks. Dr. Taba provided his examination findings and recommended that appellant not return to work.[2] In a July 7, 2003 report, Debra Brown, a physician's assistant for Dr. Taba, noted appellant's June 20, 2003 MRI scan findings.

In a July 8, 2003 report, Dr. Marks advised that appellant could not return to work due to an interstitial tear in left gluteus medius and minimus muscles, which had been aggravated or caused by excessive walking at work. He opined that the muscular injury in the left gluteal region was consistent with overuse and that appellant should not return to work until the injury had healed. The physician stated that, since appellant's total hip arthroplasties and lumbar pathology made walking awkward, the awkwardness of the gait would predispose appellant toward injuries of this sort. A bone scan was recommended.

In an August 5, 2003 letter, the employing establishment controverted the claim on the basis that the restricted-duty position was sedentary and the only walking involved would be to go to the break area, while the reports of Drs. Marks and Taba referred to excessive walking.

By decision dated August 13, 2003, the Office denied appellant's claim on the basis that she failed to establish that the event occurred as alleged. The Office noted that the employing establishment described the position as that of a sedentary nature and the walking involved would be to go to the break area. The Office further stated that, although appellant had alleged that the incident occurred at 9:15 a.m., the employing establishment had indicated that she was observed at 9:30 a.m. walking through the building and heading out to the parking lot without the assistance of a cane and walking in a semi-normal manner.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing that he or she sustained an injury while in the performance of duty.[4] 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 that is alleged to have occurred. To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not

[2] Dr. Taba's credentials are not discernible from the record.

[3] 5 U.S.C. §§ 8101-8193.

[4] 20 C.F.R. § 10.115; *see also Leon Thomas*, 52 ECAB 202 (2001).

met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[5]

The second component is whether the employment incident caused a personal injury and this can be established only by medical evidence.[6] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relate to the employment incident.[7]

ANALYSIS

On her Form CA-1, appellant asserted that at 9:15 a.m. she pulled a groin muscle while entering the building while walking. Mr. Nolen advised that appellant was initially in the building to report for her assignment at 6:35 a.m., had left the break area around 8:20 a.m. and was later in the building at 9:30 a.m. walking to the parking lot. Mr. Nolen also noted his observations of appellant's walking. The Board has consistently held that a claimant's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[8]

While the record does not establish the reason why appellant was in the building between 9:15 a.m. and 9:30 a.m., it is an uncontroverted fact that she walked from the building to the guard shack and back to the building several times after starting her workday at 6:35 a.m. Appellant has alleged that the walking and sitting required in her light-duty job caused her condition.[9] Although the employing establishment refuted appellant's claim on the grounds that the light-duty position was sedentary in nature and the only walking involved would be to go to the break room, it is well established that the Act does not require the showing of unusual exertion or stress in the employment as a prerequisite for compensability. A claim is compensable if it is established that the performance of regular duties did, in fact, precipitate or cause the injury claimed.[10] It is uncontroverted that appellant was walking on June 11, 2003 and that the employment incident occurred, as alleged. As the Board finds that appellant experienced the June 11, 2003 employment incident, the remaining issue is whether the incident caused an injury.

In order to satisfy her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.[11] Rationalized medical opinion evidence is medical evidence, which

[5] *Betty J. Smith*, 54 ECAB ___ (Docket No. 02-149, issued October 29, 2002).

[6] *Deborah L. Beatty*, 54 ECAB ___ (Docket No. 02-2294, issued January 15, 2003).

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

[8] *Thelma Rogers*, 42 ECAB 866, 869-70 (1991).

[9] Although appellant returned to light duty, the Office properly developed the current claim as a new injury as the alleged injury of June 11, 2003 constituted an intervening incident. *See* 20 C.F.R. § 10.104.

[10] *See James Washington, Jr.*, 42 ECAB 187 (1990); *John J. Gallagher*, 35 ECAB 1128 (1984).

[11] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the employee's alleged injury and the employment incident. The physician's opinion must be based on a complete factual and medical history of the employee, must be of reasonable certainty and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.[12]

The evidence of record does not contain rationalized medical opinion evidence relating appellant's condition to the June 11, 2003 employment incident. In a July 8, 2003 report, Dr. Marks failed to explain how appellant's diagnosed medical condition, an interstitial tear in left gluteus medius and minimus muscles, was causally related to her walking on June 11, 2003. Although Dr. Marks indicated that appellant's awkward gait predisposed her towards such an overuse injury, he failed to provide medical rationale explaining how or why appellant's muscular tear injury was caused or aggravated by walking at work. Additionally, from his earlier report of June 12, 2003, Dr. Marks appears to rely on an improper history of injury as he noted that appellant had been working eight-hour shifts at the guard point. The record, however, indicates that appellant had worked only on June 11, 2003 from 6:35 until 11:40 a.m. As Dr. Marks' opinion is not supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors and is not based on a proper factual history, it is of diminished probative value and is insufficient to establish causal relation.[13] The remaining medical evidence of record either does not address causal relation or predates the June 11, 2003 injury. As such appellant has not satisfied her burden of proof.

CONCLUSION

The Board finds that appellant has established that she experienced an employment incident on June 11, 2003, but has failed to establish causal relation.

[12] *See Shirley R. Haywood*, 48 ECAB 404, 407 (1997).

[13] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 13, 2003 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: May 25, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member