

**United States Department of Labor
Employees' Compensation Appeals Board**

JULIE A. KWIATKOWSKI, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Broadview Heights, OH, Employer**

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**Docket No. 05-44
Issued: April 1, 2005**

Appearances:

*Alan J. Shapiro, 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
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 29, 2004 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated November 20, 2003 and August 26, 2004 which denied her claim. Under 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 causally related to factors of her employment.

FACTUAL HISTORY

On September 29, 2003 appellant, then a 40-year-old part-time regular letter carrier, filed a Form CA-1, traumatic injury claim, alleging that on August 14, 2003 she injured her back, hip and legs when she repeatedly bent and lifted tubs of mail. She went to a medical center that day, and was off work for three months, after which she returned to modified duty.

By letter dated October 10, 2003, the Office informed appellant of the type of evidence needed to support her claim. In an undated statement, appellant again reported that she injured her back, hip and leg while bending to pick up tubs of mail, and in a response to Office questions dated October 23, 2003, she stated that her back went out when she lifted a mail tub. She reported that she immediately notified her supervisor and station manager who sent her for medical treatment.

Appellant submitted a medical report from the emergency department at Marymount Hospital dated August 14, 2003 in which Dr. John Somple, Board-certified in emergency medicine, diagnosed acute lumbosacral strain and radiculopathy and provided a restriction that appellant could not return to work until seen by a private physician. He noted that the restriction was valid until August 19, 2003. Appellant also submitted disability slips dated August 14 and 19 and September 2, 2003, which were not signed. In a disability slip dated September 12, 2003, Dr. Scott Seifert, a Board-certified osteopath specializing in family practice, indicated that appellant was under his care and could return to work on September 16, 2003.¹

In an undated statement, Joyce Shaffner, an employing establishment manager, noted that at approximately 8:30 a.m., ten minutes after appellant began work on August 14, 2003, she observed appellant holding her stomach and walking partially bent. She questioned appellant about her condition, and appellant reported that she was not sure what caused her problem, noting that she had a bad cold and cough and related that she could not remember doing anything in particular to cause the pain and reported that, at approximately 8:40 a.m., appellant, accompanied by a union steward, requested to go to the medical center. Ms. Shaffner stated that appellant reiterated that she was not sure of the cause of her problem and that she later returned to the employing establishment and told Ms. Shaffner that she had walking pneumonia and was not to work until cleared by her doctor. Ms. Shaffner noted that, at about 4:00 p.m. that day, appellant's husband, also a postal employee, stated that he thought appellant was hurting from a sciatic nerve. She concluded that a similar incident took place on March 15, 2001.

By decision dated November 20, 2003, the Office denied the claim on the grounds that the medical evidence submitted failed to establish that appellant's condition was caused, accelerated, aggravated or precipitated by employment duties. On November 26, 2003 appellant, through counsel, requested a hearing and submitted an Ohio workers' compensation report form, signed and dated by her on August 14, 2003, which reported an injury to the lower back on that day. The form did not provide a description of injury.

Appellant also submitted additional medical evidence, including an August 14, 2003 report in which Dr. Somple noted appellant's complaints of cough with congestion and back pain with radiation down the legs, stating "she apparently has had episodes of this in the remote past that healed on [their] own eventually." His back examination showed minimal tenderness of the lumbosacral spine, mostly in the sciatic area, with mild discomfort touching her toes. Chest x-ray was clear. Dr. Somple diagnosed lumbosacral strain and radiculopathy and acute asthmatic bronchitis.

¹ Appellant further submitted a September 12, 2003 form order for a lumbosacral magnetic resonance imaging (MRI) scan study.

In a report dated October 21, 2003, Dr. Eugene O. Balkovec, a Board-certified osteopath specializing in family practice and an associate of Dr. Seifert, advised that he first examined appellant on August 17, 2003 for low back pain, noting a history that the pain came on abruptly on August 14, 2003 with radiation into the left hip and knee. He noted positive examination findings and stated that appellant had attempted to return to work on August 27, 2003 but was unable to do so because of severe low back and left sciatic pain. Dr. Seifert reported that a September 12, 2003 x-ray showed mild spondylosis and levoscoliosis and that appellant's condition continued to worsen with neurologic deficits detected on October 10, 2003. Dr. Balkovec noted MRI scan findings of a left posterolateral L4-5 disc herniation impinging on the L4 nerve root and advised that appellant was being treated with steroid epidural blocks. He concluded, "I feel the constant trauma exerted on her low back from lifting the heavy tubs at work was responsible for her herniated disc." In a form report dated November 17, 2003, Dr. Balkovec diagnosed the herniated disc and checked a box "yes" indicating that the condition was employment related, stating "injury occurred at work after moving and lifting heavy boxes."

At the hearing, held on June 24, 2004, appellant described her job duties, stating that, on August 14, 2003, about 15 minutes after she began work, she leaned over to pick up a tub of mail, and when placing it down, her back went out, and the pain got very acute. She testified that her supervisor and the station manager told her to go to the medical center, which was next door. Appellant stated that she walked there with difficulty, was treated and was told to report to her private physician, noting that she saw Dr. Balkovec several days later. He testified that she filed a CA-1 claim form on August 14, 2003 and that this was witnessed by a union steward who heard her report of back pain. Appellant stated that she came under the care of Dr. Henry F. Fabian, Jr., Board-certified in orthopedic surgery, who performed two operations, noting that she returned to work about two weeks after the last surgical procedure with the only restriction that she could not carry a mailbag on her back. The hearing representative requested that appellant submit a statement from the union representative who accompanied her on August 14, 2003 and to submit medical evidence regarding the cause of her condition.

Subsequent to the hearing appellant submitted a number of treatment notes dating from August 18, 2003 to February 24, 2004 in which Dr. Balkovec noted her complaints, his examination findings and treatment recommendations and his opinion that she was unable to work. In an Ohio workers' compensation form report, which noted a date of injury of August 14, 2003 signed by appellant on August 18, 2003 and by Dr. Balkovec on August 25, 2003, he advised that constant lifting aggravated appellant's lower back. Lumbosacral spine x-rays reports dated October 2, 2000 and August 20, 2003 were interpreted as negative.² An MRI scan of the lumbosacral spine on October 13, 2003 was read by Dr. Daniel Rockey, Board-certified in diagnostic, vascular and interventional radiology, as demonstrating a left posterolateral L4-5 disc herniation with mild disc bulging at L5-S1.

Dr. Fabian provided treatment notes and operative reports dating from November 11, 2003 to June 22, 2004. In his initial report dated November 11, 2003, he noted a history that appellant sustained an injury at work on August 14, 2003 when she had a sudden onset of low

² The credentials of the physicians reading the x-ray studies, Drs. Guy S. Syvertsen and James Libberman, respectively, could not be ascertained.

back pain with radiation when she tried to pick up a tub of mail. He observed that appellant's symptoms were "classic" for a left L4-5 radiculopathy. Dr. Fabian noted the MRI scan findings and his findings on physical examination and his recommendation of surgery. The initial surgery was performed on January 13, 2004 with pre and postoperative diagnoses of herniated nucleus pulposus at L4-5, left. A February 6, 2004 MRI scan was reported by Dr. Cheryl Petersilge, Board-certified in diagnostic radiology, as showing residual herniation, and appellant underwent a second surgical procedure on March 1, 2004 to remove a disc fragment. In a note dated June 22, 2004, Dr. Fabian advised that appellant was doing well but should not carry bags at work, which could be a permanent restriction. He stated that she had "fairly significant" degenerative disc disease at the surgical level.

By decision dated August 26, 2004, an Office hearing representative affirmed the prior decision. The hearing representative found that appellant's inconsistent history of injury, the delay in reporting the injury and filing her claim, and the discrepancies in the medical reports dated August 14, 2003 that did not provide a mechanism of injury cast doubt as to whether the injury occurred in the time, place and in the manner alleged. She further found that appellant had not provided any medical evidence relating her back condition to a specific incident on August 14, 2003.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 timely filed within the applicable time limitation period 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁴

Office 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.⁵ To determine whether an employee sustained a traumatic injury in the performance of duty, the Office 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 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

³ 5 U.S.C. §§ 8101-8193.

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004).

the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁶

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁷ 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.⁸ 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.⁹

Under the Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.¹⁰ Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.¹¹

ANALYSIS

The Board finds the August 14, 2003 employment incident established. An employee's statement alleging 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 and persuasive evidence.¹² 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 the circumstances and his or her subsequent course of action.

⁶ Gary J. Watling, *supra* note 4.

⁷ Jacqueline M. Nixon-Steward, 52 ECAB 140 (2000).

⁸ Leslie C. Moore, 52 ECAB 132 (2000); Gary L. Fowler, 45 ECAB 365 (1994).

⁹ Dennis M. Mascarenas, 49 ECAB 215 (1997).

¹⁰ Cheryl L. Decavich, 50 ECAB 397 (1999).

¹¹ Fereidoon Kharabi, 52 ECAB 291 (2001).

¹² Allen C. Hundley, 53 ECAB 551 (2002).

Although the specifics differed regarding appellant's report of injury on August 14, 2003, the Board finds that these inconsistencies were not sufficient to impugn the validity of the claim.¹³ In her written statements and oral testimony, appellant consistently reported that bending and lifting of mail tubs on August 14, 2003 caused injury to her back, hip and legs and noted that she immediately notified her supervisor in that regard. At the hearing appellant testified that her back went out on August 14, 2003 when she bent to pick up a tub of mail and was placing it down. While Ms. Shaffner reported that appellant stated that she did not know what caused her condition, Ms. Shaffner noted that appellant was bent over and sought medical care immediately. While appellant did not file her claim form until September 29, 2003, she immediately sought medical care on August 14, 2003 and was diagnosed with acute lumbosacral strain and acute asthmatic bronchitis. Furthermore, she received treatment for a back condition from her family physician on August 17, 2003, and the record contains an Ohio workers' compensation form, signed by appellant on August 18, 2003, which reported an employment injury on August 14, 2003. The Board therefore finds that appellant experienced an August 14, 2003 employment incident. It must next be determined if the incident caused an injury.

In order to satisfy her burden of proof, appellant must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the August 14, 2003 employment incident.¹⁴ In his decision denying appellant's claim, the Office hearing representative also found, and the Board agrees, that the record did not contain sufficient medical evidence to establish causal relationship.

In his reports dated August 14, 2003, Dr. Somple diagnosed lumbosacral strain and radiculopathy as well as acute bronchitis. He, however, did not provide an opinion regarding the cause of appellant's condition, and 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.¹⁵ Dr. Balkovec noted that he first examined appellant on August 17, 2003 and advised that her physical findings progressively worsened with October 13, 2003 MRI scan findings of a herniated disc at L4-5. He opined that "the constant trauma exerted on her low back from lifting the heavy tubs at work was responsible for her herniated disc" and also opined that appellant's back injury "occurred at work after moving and lifting heavy boxes." Dr. Balkovec did not attribute appellant's condition to the one lifting incident of August 14, 2003. Rather, he attributed her condition to multiple lifting events. His opinion is,

¹³ *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002).

¹⁴ *Leslie C. Moore*, *supra* note 8.

¹⁵ *Willie M. Miller*, 53 ECAB 697 (2002).

therefore, insufficient to establish appellant's claim that she sustained an injury due to the August 14, 2003 incident.¹⁶

Dr. Fabian, who performed surgery on appellant, reported a history that appellant sustained an injury at work on August 14, 2003 when she had a sudden onset of low back pain with radiation when she tried to pick up a tub of mail and observed that her symptoms were "classic" for a left L4-5 radiculopathy. A mere conclusion without the necessary medical rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet the claimant's burden of proof. The medical evidence must also include rationale explaining how the physician reached the conclusion he or she is supporting.¹⁷ In this case, Dr. Fabian did not provide a specific explanation regarding how the August 14, 2003 lifting incident caused appellant's back condition. His opinion is thus of limited probative value on the issue of causal relationship as it is unsupported by medical rationale.¹⁸ Because appellant did not submit a reasoned medical opinion explaining how the August 14, 2003 incident caused or contributed to her diagnosed back condition, she did not establish the critical element of causal relationship and did not meet her burden of proof.¹⁹

CONCLUSION

The Board finds that, while appellant met her burden of proof to establish that she sustained an employment incident on August 14, 2003, she did not meet her burden of proof to establish that she sustained an injury causally related to the August 14, 2003 employment incident.

¹⁶ The Board notes that Dr. Balkovec's opinion is more supportive of an occupational disease claim. Office regulations, at 20 C.F.R. § 10.5(q) define occupational disease as a condition produced by the work environment over a period longer than a single workday or shift. To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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. *Donna L. Mims*, 53 ECAB 730 (2002).

¹⁷ *Beverly A. Spencer*, 55 ECAB ____ (Docket No. 03-2033, issued May 3, 2004).

¹⁸ *Id.*; *Conard Hightower*, 54 ECAB ____ (Docket No. 02-1568, issued September 9, 2003).

¹⁹ *John W. Montoya*, 54 ECAB ____ (Docket No. 02-2249, issued January 3, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 26, 2004 be affirmed as modified.

Issued: April 1, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member