United States Department of Labor
Employees' Compensation Appeals Board

TANISHA TURNER, Appellant	)	
	)	**Docket No. 05-679**
and	)	**Issued: August 8, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Miami, FL, Employer	)	

Appearances:
Tanisha Turner, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On January 21, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 21, 2004. Appellant also appealed a November 29, 2004 decision, which denied her request for reconsideration without a merit review of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a back injury in the performance of duty; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On November 24, 2003 appellant, then a 24-year-old letter carrier, filed a claim alleging that on November 24, 2003 she was hit by a postal truck in the employing establishment parking

lot and sustained a back injury. Appellant stopped work on November 24, 2003 and returned on December 1, 2003.

Appellant's supervisor, in a duty status report dated November 24, 2003, noted that appellant reported being struck by a vehicle backing up. The medical portion of the report, from an emergency physician whose signature is not legible, noted that appellant was treated for neck and low back pain and diagnosed acute lumbosacral strain. The physician indicated that appellant provided a history of injury consistent with that noted by the supervisor. Also submitted was a return to work certificate dated December 3, 2003 prepared by Dr. Joseph I. Chi, a specialist in internal medicine, noting that appellant was released to work on December 15, 2003.

By letter dated December 19, 2003, the Office asked appellant to submit additional information including a comprehensive medical report from her treating physician, which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed back and neck injury. No additional information was received by the Office.

In a decision dated January 21, 2004, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant sustained the alleged injury on November 24, 2003 as required by the Federal Employees' Compensation Act.[1] The Office found that the initial evidence of record was insufficient to establish that appellant experienced the claimed incident on November 24, 2003.

On November 5, 2004 appellant requested reconsideration and submitted additional evidence. Appellant submitted a law enforcement report, which noted that on November 24, 2003 she was involved in a motor vehicle accident with a postal truck in the employing establishment parking lot. The report further noted that driver Esteban Martinez was charged with improper backing. Emergency room notes advised that appellant was treated on November 24, 2003 for back and hip pain sustained when she was struck by a van while at work. Appellant was diagnosed with a sprain due to motor vehicle collision with a pedestrian. Appellant submitted a statement dated November 24, 2003 noting that, as she was loading mail into her mail truck, she was struck by another postal vehicle. She indicated that the truck hit her back and buttocks and she was taken by ambulance to the hospital. Also submitted were notes from Dr. Chi, who indicated treating appellant from December 3, 2003 to March 26, 2004 and who noted that appellant was to observe bed rest until further notice. In a duty status report, the physician whose signature is illegible noted that appellant was treated for a tender back due to trauma and could return to work full time subject to various restrictions. In a certificate of health care provider form, Dr. Chi advised that appellant was treated for back pain commencing in November 2003. He noted that appellant could work intermittently until January 30, 2004 and recommended physical therapy for five weeks.

[1] 5 U.S.C. §§ 8101-8193.

In a November 29, 2004 decision, the Office denied appellant's reconsideration request on the grounds that the evidence was insufficient to warrant a merit review.

LEGAL PRECEDENT

An employee seeking benefits under the 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. 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.[2]

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.[3] 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 his or 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 met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[4] 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.[5]

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

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

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

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

[5] *Id*.

[6] *Leslie C. Moore*, 52 ECAB 132 (2000).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

ANALYSIS

In its January 21, 2004 decision, the Office denied appellant's claim on the grounds that the evidence was not sufficient to establish that appellant experienced the claimed incident on November 24, 2003 as alleged. However, the evidence supports that appellant was struck by a vehicle in the employing establishment parking lot as alleged. Appellant promptly filed a Form CA-1, notice of traumatic injury, on the date of the incident and has provided a consistent history of the injury as reported to the emergency room physician on the duty status report dated November 24, 2003, all of which note that appellant was struck by a vehicle backing up on November 24, 2003 and thereafter complained of lumbar and cervical pain. While appellant's supervisor indicated that he did not witness the incident, he did not dispute that it occurred. The Board finds that appellant's statements are consistent with the surrounding facts and circumstances and thus has established that she experienced the employment incident on November 24, 2003. The Board finds however that the medical evidence is insufficient to establish that appellant sustained a lumbar and cervical strain causally related to the November 24, 2003 incident.

The medical records submitted most contemporaneously with the date of the alleged injury, specifically the duty status report dated November 24, 2003, noted the history of injury reported by appellant. However, the emergency room physician, whose signature is illegible, failed to provide a rationalized opinion regarding the causal relationship between appellant's cervical and lumbar condition and the factors of employment believed to have caused or contributed to such condition.[8] For example, he did not explain how the manner in which appellant was hit would cause or aggravate a specific medical condition. Therefore, this report is insufficient to meet appellant's burden of proof. Also submitted was a return to work certificate dated December 3, 2003 prepared by Dr. Chi, who indicated that appellant was being evaluated for neck and low back pain and was diagnosed with acute lumbosacral strain and was released to work on December 15, 2003. However, Dr. Chi neither mentioned that appellant's condition was work related nor did he provide a specific opinion as to the causal relationship between the November 24, 2003 incident and appellant's cervical and lumbar strain.[9] Therefore, these reports are insufficient to meet appellant's burden of proof.

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 her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[10]

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[7] *Jimmie H. Duckett,* 52 ECAB 332 (2001); *Franklin D. Haislah,* 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[8] *Id.*

[9] *See Jimmie H. Duckett, supra* note 7.

[10] *See Dennis M. Mascarenas,* 49 ECAB 215 (1997).

The Board finds that it is unnecessary to address the second issue in this case in view of the disposition of the first issue, in which the Board accepted that the incident of November 24, 2003 occurred as alleged.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty.[11]

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2004 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: August 8, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

[11] After the Office's January 21, 2004 decision, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).