United States Department of Labor
Employees' Compensation Appeals Board

MARIANNE STAVINOHA, Appellant	)	
and	)	**Docket No. 04-1947**
	)	**Issued: January 31, 2005**
U.S. POSTAL SERVICE, ALVIN POST OFFICE, Alvin, TX, Employer	)	

Appearances:
Marianne Stavinoha, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On July 26, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 21, 2004 which denied her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a traumatic injury to her neck while in the performance of duty on May 4, 2004; and (2) whether appellant is entitled to continuation of pay.

FACTUAL HISTORY

On May 10, 2004 appellant, a 58-year-old mail carrier, filed a traumatic injury claim (CA-1) alleging that, on May 4, 2004, she suffered neck pain and spasms in an automobile accident while on duty. The official supervisor's report reflects that appellant notified her supervisor and first received medical care on the date of the injury and stopped working the

following day. Appellant submitted no additional evidence in conjunction with her original claim.

On May 17, 2004 the Office notified appellant that the evidence submitted was insufficient to establish her claim and advised her to provide additional documentation, including a firm diagnosis and a physician's opinion as to how her injury resulted in the diagnosed condition. The Office specifically asked appellant to provide a detailed description of where she was and what she was doing at the time of the accident and as to how the injury occurred; the cause of the injury; and statements from any witnesses or other documentation supporting her claim.

In response to the Office's request, appellant submitted several documents, including a duty status report and progress note signed by Dr. Manjit S. Randhawa, a Board-certified anesthesiologist,[1] dated May 4, 2004; a personal statement dated June 12, 2004; and a continuation of pay worksheet dated May 27, 2004. In her personal statement, appellant related that the accident occurred at an intersection near the Alvin Post Office shortly after she had left to deliver mail on May 4, 2004 at approximately 11:30 a.m. She indicated that the police and her supervisor appeared at the scene of the accident and that her car was not drivable and had to be towed. Appellant further stated that she was not aware of any physical injuries until she returned to her office, when she began having muscle spasms in her neck. Her continuation of pay worksheet reflected that she stopped work on May 5, 2004 and returned to work full time on May 18, 2004. In the duty status report, when asked to specify how the injury occurred and to identify the parts of the body affected, Dr. Randhawa stated "vehicular accident -- neck" and diagnosed her condition as cervical strain. In his progress note, Dr. Randhawa recites the facts as presented by appellant, *i.e.*, that she had been in a motor vehicle accident and was complaining of some neck pain and pain in both of her shoulder areas; that she had not lost consciousness; and that she did not go to an emergency room following the accident. His "assessment" was "Cervicalgia. Musculosketal strain," for which he prescribed Flexeril and Celebrex and advised appellant to "put some heat on the muscles of her neck."

In a merit decision dated July 21, 2004, the Office denied appellant's claim, finding the evidence insufficient to establish that the claimed medical condition was related to the alleged work incident.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees' Compensation Act[2] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase "sustained while in the performance of duty" is regarded as

[1] Dr. Randhawa's letterhead indicates that he is also a Diplomat of the American Academy of Pain Management.

[2] 5 U.S.C. § 8101 *et seq.*

[3] 5 U.S.C. § 8102(a).

the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[4]

An employee seeking benefits under the Act has the burden of proof to establish 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 or specific condition for which compensation is claimed is causally related to the employment injury.[5] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.[6]

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 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 substantial doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[7]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[8] An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical

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[4] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB ___ (Docket No. 04-1257, issued, September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Betty J. Smith*, 54 ECAB ___ (Docket No. 02-149, issued October 29, 2002); *see also Tracey P. Spillane*, 54 ECAB ___ (Docket No. 02-2190, issued June 12, 2003). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[7] *See Betty J. Smith, supra* note 6.

[8] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[9] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[10]

ANALYSIS -- ISSUE I

The Board finds that appellant has failed to meet her burden of proof in establishing that that she sustained a traumatic injury to her neck on May 4, 2004. As the Office found in its June 21, 2004 decision, the evidence of record supports the fact that the claimed incident of a motor vehicle accident occurred during the performance of duty on May 4, 2004 at the time, place and in the manner alleged. However, it does not establish that the incident caused a diagnosed condition.

There is no dispute that the alleged incident occurred. Although witness statements were not provided, appellant's testimony was uncontroverted and is consistent with the surrounding facts and the circumstances and her subsequent course of action. Because her car was rendered inoperable, she was forced to walk back to the employing establishment. She immediately reported the accident to her supervisor and shortly thereafter sought medical attention. Subsequently, pursuant to a note from her doctor, she took leave from May 5 through 17, 2004. The case, therefore, rests on whether the incident caused an injury.

As a threshold matter, appellant did not state with clarity a specific injury for which she is seeking compensation. Appellant alleged in her CA-1 claim form that she experienced neck pain and spasms. Standing alone, appellant's allegation of pain, coupled with her belief that the alleged injury was caused by factors relating to her employment, is insufficient to constitute a basis for the payment of compensation.[11]

Further, the medical evidence presented does not provide a specific diagnosis or a rationalized medical opinion to establish that specific employment factors caused or aggravated any particular medical condition or disability. In its May 17, 2004 letter, the Office requested that appellant submit additional medical evidence to support her claim; however, she did not submit any medical evidence which addressed causal relationship. In the duty status report, in response to "13c" seeking information on "Diagnosis of Condition Due to Injury," Dr. Randhawa wrote "cervical strain," and in response to "13b" seeking information on "Description of Clinical Findings" wrote "Neck Pain." In his progress note, he noted his "assessment" to be "Cervicalgia. Musculoskeletal strain." Dr. Randhawa failed to provide a firm diagnosis.

[10] *John W. Montoya*, 54 ECAB ___ (Docket No. 02-2249, issued January 3, 2003).

[11] *See Robert Broome*, *supra* note 5.

The Board has consistently held that a vague and indeterminate writing does not constitute a valid diagnosis. In *Robert J. Krstyen*,[12] the Board denied the claim of a maintenance mechanic that he suffered a low back pain injury while moving a dishwasher. In response to a question for a diagnosis, the attending physician had written "?radiculopathy,"[13] and supported causal relationship by checking a box indicating that appellant's condition was work related. The Board held that the writing did not provide a firm diagnosis and that because the physician's opinion on causal relation was without rationale or explanation, it had little probative value and was insufficient to establish causal relation.[14] Although another physician provided a specific diagnosis of "degenerative disc disease with a central disc herniation," the Board denied the claim based on the fact that there was no discussion of causal relationship between appellant's condition and the injury alleged. Likewise, in the instant case, Dr. Randhawa's diagnosis is vague and offers absolutely no rationalized medical opinion regarding a causal relationship between appellant's automobile accident and her diagnosed condition. There is no medical evidence of record which explains the physiological process by which appellant's work activities would have caused the diagnosed condition. Therefore, the Office properly denied appellant's claim for benefits under the Act.

LEGAL PRECEDENT -- ISSUE 2

Time limitations for making a claim for continuation of pay (COP) are provided by section 10.205 of the Code of Federal Regulations.[15] This regulation provides in pertinent part as follows:

"To be eligible for COP, a person must:"

* * *

"(2) File Form CA-1 within 30 days of the date of the injury…."[16]

The Act authorizes continuation of pay of an employee who has filed a valid claim for traumatic injury.[17] However, if that claim is denied, the employee will be deemed ineligible for the payments and at his or her discretion, any payments previously made will be charged to sick or annual leave or deemed overpayments within the meaning of 5 U.S.C. § 5584.[18]

[12] 44 ECAB 227 (1992).

[13] Dorland's Illustrated Medical Dictionary defines "radiculopathy" as a "disease of the nerve roots."

[14] *Id.* at 230.

[15] 20 C.F.R. § 10.205.

[16] *Id.*

[17] 5 U.S.C. § 8118(a).

[18] 5 U.S.C. § 8118(d).

ANALYSIS -- ISSUE 2

The Board finds that appellant is not entitled to receive continuation of pay. Her CA-1, which was filed on May 10, 2004, reported an injury which allegedly occurred on May 4, 2004. Although appellant filed within the 30-day period provided by the Code of Federal Regulations,[19] since her traumatic injury claim was denied, she is not entitled to receive continuation of pay.[20]

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained a traumatic injury to her neck in the performance of duty, and she is not entitled to receive continuation of pay.

ORDER

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

Issued: January 31, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

[19] 20 C.F.R. § 10.205.

[20] 5 U.S.C. § 8118(d).