United States Department of Labor
Employees' Compensation Appeals Board

KIM L. WHARTON, Appellant	)	
and	)	**Docket No. 04-2031**
	)	**Issued: March 16, 2005**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Hazelwood, MO, Employer	)	

Appearances:
Kim L. Wharton, pro se
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 August 16, 2004 appellant filed a timely appeal from the merit decisions of the Office of Workers' Compensation Programs dated January 6, April 6 and July 8, 2004 which denied her claim for a work-related injury on November 9, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on November 9, 2003, as alleged.

FACTUAL HISTORY

On November 10, 2003 appellant, then a 47-year-old mail handler, filed a traumatic injury claim alleging that on November 9, 2003 she pulled something in her back when lifting an object off the missent table. She submitted a note by Dr. Joule N. Stevenson, a Board-certified family practitioner, indicating that appellant was disabled from November 9 through 12, 2003 and could return to work with restrictions of no lifting of 0 to 10 pounds and no standing longer

than 2 hours. He noted that these restrictions were to be in effect for one week. The employing establishment controverted the claim. By letter dated November 25, 2003, the Office requested that appellant submit further evidence.[1]

In a form completed on December 12, 2003, Dr. Stevenson indicated that appellant sustained a lumbar strain and was able to work with adequate pain control. He noted that appellant was unable to do any type of work from November 9 to December 15, 2003.

By decision dated January 6, 2004, the Office denied appellant's claim for compensation. It accepted that the November 9, 2003 incident occurred, but found there was no medical evidence that provided a diagnosis which could be connected to an event.

By letter dated March 4, 2004, appellant requested reconsideration and submitted a January 9, 2004 medical report from Dr. Stevenson, who stated:

> "[Appellant] suffers from a lumbar strain of her lower back. She received this injury on November 11, 2003 as a result of repetitive lifting. She was initially examined on November 11, 2003. Her chief complaint at that time was mid and low range back pain for two days. On physical examination, she had limited range of motion of her back and tenderness in the lumbar area. She was given a referral for physical therapy.
>
> "At the present time, she continues to receive physical therapy and now has been placed on nonsteroidal anti-inflammatory agents to assist with her pain. She has also been given work restrictions."

By decision dated April 6, 2004, the Office denied modification of the January 6, 2004 decision finding that appellant failed to establish that she sustained an injury resulting from the accepted employment incident. The Office noted that appellant had several cases for accepted lumbar strains which required restrictions of no lifting, and that Dr. Stevenson's opinion was of diminished value because he stated that the incident occurred on November 11, 2003 instead of November 9, 2003.

By letter dated June 19, 2004, appellant requested reconsideration, contending that part of the reason that she was not better was that the Office stopped her rehabilitation program. She noted that she hurt herself on November 9, 2003 when, while working on her limited-duty assignment, she lifted a box weighing about 25 to 30 pounds and felt her back "pop." Appellant submitted a December 1, 2003 screening assessment from Forest Park Hospital in which appellant described her pain as a burning, throbbing sensation she experience as a result of lifting at work. She also submitted the December 12, 2003 medical certificate from Dr. Stevenson, a letter and supporting documents from her physical therapist and a letter dated November 26, 2003 from her employer.

[1] The Office had previously accepted that appellant had prior work-related back strains/sprains on March 20, 1999, June 9, 2002 and April 6, 2003.

By decision dated July 8, 2004, the Office denied modification of the April 6, 2004 decision, finding that appellant failed to provide medical evidence establishing that her injury resulted from the November 9, 2003 incident while performing limited-duty work.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation 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 or specific condition for which compensation is claimed is causally related to the employment injury.[2] 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.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

ANALYSIS

In the instant case, the Office accepted that appellant established that the November 9, 2003 incident occurred. The claim was denied on the grounds that the medical evidence failed to establish a causal relationship between this incident and the medical condition.

The Board finds that appellant failed to provide medical evidence sufficient to establish that she sustained an injury causally related to the work incident of November 9, 2003. Dr. Stevenson indicated that appellant sustained a lumbar strain of her lower back as a result of repetitive lifting on November 11, 2003. The Board finds that Dr. Stevenson's opinion is of diminished weight due as the accepted incident occurred on November 9, 2003. This constitutes an erroneous history of injury and is generally inconsistent with his prior report which noted that appellant's disability began on November 9, 2003. Moreover, Dr. Stevenson did not discuss appellant's prior injuries or adequately explain why the lumbar sprain was not attributable to one of the earlier accepted injuries. He did not address the fact that appellant was on limited duty on the date of the incident. Dr. Stevenson also indicated that the injury was the result of repetitive

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[4] *See Tracey P. Spillane*, 54 ECAB ___ (Docket No. 02-2190, issued June 12, 2003); *Deborah L. Beatty*, 54 ECAB ___ (Docket No. 02-2294, issued January 15, 2003).

[5] *Id.*

lifting, whereas appellant indicated that she sustained the injury as a result of a single incident that occurred on November 9, 2003. Therefore, Dr. Stevenson's reports are not sufficient to establish appellant's claim for injury on November 9, 2003. The Board notes that physical therapy reports are not competent medical evidence as physical therapists are not defined as a "physician" under the Act.[6] Accordingly, as appellant failed to provide competent medical evidence in support of the fact that she sustained an injury causally related to the November 9, 2003 incident, the Office properly denied appellant's claim.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on November 9, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 8, April 6 and January 6, 2004 are hereby affirmed.

Issued: March 16, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[6] 5 U.S.C. § 8101(2); *see Howard P. Lane*, 36 ECAB 107 (1984).