United States Department of Labor
Employees' Compensation Appeals Board

GWENDOLYN S. SNYDER, Appellant	)	
and	)	**Docket No. 05-1372**
	)	**Issued: November 10, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Canton, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant,
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 13, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated March 14, 2005 which found that she did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on August 5, 2004.

FACTUAL HISTORY

On August 10, 2004 appellant, then a 49-year-old automation clerk, filed a recurrence of disability claim (Form CA-2a) alleging that on August 5, 2004 she was lifting and moving trays of mail and pushing a cart of mail when she felt low back pain. Appellant alleged that this was a

recurrence of a July 24, 1995 employment injury.[1] The Office developed the matter as a new claim for a traumatic injury.

Appellant submitted an August 6, 2004 duty status report from a physician whose signature is illegible. The physician described appellant's injury as occurring after she lifted trays and twisted her back. The physician diagnosed a sprain of the right hip. Two partially illegible reports from Dr. Amin J. Khalil, Board-certified in internal medicine, dated August 6, and 9, 2004, provide a diagnosis of right hip sprain. Appellant also submitted numerous physical therapy notes which indicated that she was treated for lumbosacral pain. In an August 6, 2004 x-ray of the right hip and pelvis, Dr. Alexis Sayoc, a Board-certified diagnostic radiologist, found a normal study. In an August 6, 2004 emergency room report, Dr. Antonio Lazcano, Board-certified in emergency medicine, stated that, on the day prior to his examination, appellant was working and felt something snap in her hip. He noted that x-rays showed no fractures and diagnosed right hip pain.

By letter dated January 31, 2005, the Office advised appellant that the evidence was insufficient to establish her claim. On her claim form, she indicated that she was lifting and moving trays of mail and pushing mail carts when she experienced tender muscles in her side and low back pain. However, the medical reports indicated that she was lifting a tray and twisted her back and subsequently experienced pain in her right leg. The Office also noted that Dr. Lazcano's report indicated that appellant was working and felt something snap in her hip. Appellant was requested to further describe how the injury occurred and to provide additional medical evidence that included a physician's opinion on how the reported work incident caused the injury.

A February 28, 2005 x-ray of the left shoulder was obtained. Dr. Barry McNulty, a Board-certified radiologist, advised that appellant had pain after a lifting injury and diagnosed acromioclavicular degenerative changes with no acute osseous abnormality.

In a March 1, 2005 report, Dr. L. Bruce Hensley, an osteopath, noted a history provided by appellant of lifting and pulling trays of mail and pain in both shoulders, left elbow, wrist and neck. He diagnosed a strain of the left shoulder. Dr. Hensley recommended no lifting over 10 pounds and no reaching above shoulder level. He checked a box on the form report to indicate that appellant's injury was directly related to work.

The Office also received a duty status report dated February 21, 2005, from a physician whose signature is illegible. The physician prescribed restrictions for appellant but did not provide any findings or diagnosis.

By decision dated March 14, 2005, the Office denied appellant's claim on the grounds that she did not establish an injury as alleged. The Office determined that there was insufficient evidence to establish her claim and informed appellant that medical treatment was not authorized and prior authorization, if any, was terminated.

[1] She referred to claim No. 090405179. This was for a July 24, 1995 injury to the back. She also indicated that she had a foot injury on December 12, 1995.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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[3] and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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. 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.[6] 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.[7]

ANALYSIS

Appellant alleged that she experienced low back pain while lifting mail trays and pushing carts of mail. Although the Office's decision did not make a specific finding regarding the claimed employment incident on August 5, 2004, it is not disputed that appellant lifted mail trays and pushed carts as alleged on August 5, 2004. The Board finds that the first component of fact of injury, the claimed incident -- lifting mail trays and pushing carts of mail, occurred as alleged.

However, the medical evidence is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical reports of record do not establish that the lifting of mail trays and pushing carts of mail caused a personal injury on August 5, 2004. The medical evidence contains no firm diagnosis, no rationale[8] and no explanation of the mechanism of injury regarding a specific employment incident on August 5, 2004 as related by appellant.

The record contains an August 6, 2004 report from an unknown physician, who indicated that appellant was lifting trays and twisted her back. In reports dated August 6 and 9, 2004,

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

[5] *Delores C. Ellyet*, 41 ECAB 992 (1990).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Id.*

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

Dr. Khalil indicated that appellant had pain in the right hip and diagnosed a sprain of the right hip. However, appellant did not allege any twisting motion, nor did she allege pain in her hip. These reports do not appear to have an accurate description of the incident at work nor did they provide any opinion on causal relationship. The Board has held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.[9] Medical reports not containing rationale on causal relation are of diminished probative value and generally insufficient to meet an employee's burden of proof.[10]

Additionally, Dr. Lazcano advised that appellant related that she was working and felt something snap in her hip and diagnosed right hip pain. As noted above, this history of injury is not consistent with that provided by appellant on her claim form.[11] Dr. Lazcano also did not provide an opinion regarding causal relationship between any diagnosed condition and the employment incident of August 5, 2004.

Dr. Hensley indicated that appellant was lifting up and pulling trays of mail down and had pain in both of her shoulders, left elbow, wrist and neck and diagnosed a sprain/strain of the left shoulder. He checked a box on the form report to indicate that appellant's diagnosis was directly due to work activities. However, this report is insufficient to establish the claim. Dr. Hensley did not have an accurate factual background, as appellant's claim indicated that her injury was to her lower back. Furthermore, he did not provide any medical rationale for his opinion on causal relationship. The Board has held that merely checking a box on a form report is insufficient to establish causal relationship in the absence of medical rationale supporting the opinion.[12]

Other medical reports are insufficient as they did not specifically support that that employment activities on August 5, 2004 caused or aggravated a particular diagnosed condition.[13] The record also contains numerous physical therapy reports. However, a physical therapist is not a "physician" as deformed under section 8101(2), and cannot render a medical opinion.[14] Thus, these reports are of no value in establishing that the August 5, 2004 employment incident caused an injury.

For these reasons, the Board finds that appellant has not established her claim.

[9] *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

[10] *Albert C. Brown*, 52 ECAB 152 (2000).

[11] *See supra* note 9.

[12] *See Alberta S. Williamson*, 47 ECAB 569 (1996).

[13] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that 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).

[14] *Vickey C. Randall*, 51 ECAB 357 (2000).

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2005 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: November 10, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board