

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

ELIZABETH PINERO-MARTINEZ, Appellant)	
)	
and)	Docket No. 06-304
)	Issued: April 13, 2006
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, Employer)	
)	

Appearances:
Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 23, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated February 26, 2004 and July 12 and August 26, 2005, denying 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.

ISSUE

The issue is whether appellant sustained a traumatic injury while in the performance of duty on October 29, 2003.

FACTUAL HISTORY

On December 4, 2003 appellant, a 37-year-old sales associate, filed a traumatic injury claim (Form CA-1) alleging that on October 29, 2003 she injured her back and shoulder while lifting parcels at the customer service window. In a supervisor's report dated December 9, 2003, Dorothy Watson stated that appellant had informed her on November 10, 2003 that her injury involved her shoulder only. She further indicated that she was aware of appellant's preexisting back problems and that appellant was not required to "stage" parcels.

Appellant submitted disability certificates bearing illegible signatures dated November 3 and 13, 2003, stating that she was partially incapacitated from November 3 to 10, 2003 due to “muscle spasm” and low back syndrome.

Appellant submitted a work slip dated November 19, 2003 from Dr. Ali E. Guy, a Board-certified physiatrist, reflecting that she was under his care for “medical reasons” and advising her to refrain from working for a period of two weeks commencing November 17, 2003. A December 3, 2003 work slip reflected that she was under his care for “multiple traumatic injuries” and advised appellant to abstain from work for three weeks.

By letter dated December 22, 2003, the employing establishment controverted appellant’s claim, contending that she had a preexisting back condition and that there was no evidence of causality between her condition and the alleged employment incident.

Appellant submitted disability certificates bearing illegible signatures dated December 31, 2003, stating that she was totally disabled from November 3 to 17, 2003 due to muscle spasm and lower back syndrome.

On January 7, 2004 the Office asked Dr. Guy to provide medical records, including examination findings, x-ray results, diagnoses and an opinion with an explanation regarding how appellant’s employment caused her condition. On that same date, the Office solicited additional information from appellant detailing exactly how the alleged injury occurred, the immediate effects of the injury and the reasons for her delay in seeking treatment.

In a work slip dated December 24, 2003, Dr. Guy indicated that appellant was under his care for “multiple injuries” and advised her to abstain from work for three weeks.

In a January 28, 2004 statement, appellant indicated that she reported her injury to Ms. Watson on October 29, 2003. She further alleged that Ms. Watson did not submit her claim (Form CA-1) until December 2003. Appellant stated that, while lifting a parcel weighing in excess of 20 pounds, she felt something snap in her back and shoulder blade and that the pain worsened after a few hours of continued lifting. She claimed that she delayed reporting the injury because she was “resting to see if [the] pain [would go] away.”

In a work slip dated January 14, 2003, Dr. Guy stated that appellant suffered from multiple traumatic injuries and advised her to remain off work for two weeks.

In an undated statement received by the Office on February 13, 2004, Ms. Watson noted that appellant had informed her that the parcel she lifted when the injury occurred did not weigh more than five pounds. Ms. Watson further indicated that appellant never lifted anything over her limitation and always requested assistance with any parcel in excess of that limitation.

On February 25, 2004 the Office denied appellant’s traumatic injury claim on the grounds that she failed to establish that her claimed condition was caused by factors of employment as alleged.

On March 13, 2004 appellant requested review of the written record.

Appellant submitted a statement dated March 7, 2004 from a coworker, Luis E. Pagan, who asserted that to his knowledge, appellant had never been on light duty. He also stated that her regular duties included “putting up” parcels weighing from one pound to 70 pounds. Appellant also submitted various window service daily schedules during the period March 22 to August 5, 2003 reflecting that she was assigned to “put up L/N parcels.” In an undated statement received on April 5, 2004, appellant alleged that she always worked regular duty, which required her to lift parcels up to 70 pounds. She also alleged that her supervisor delayed the delivery of her paperwork.

In an undated statement, Lourdes Hernandez, a coworker, indicated that he observed appellant working regular duty by herself and that he never saw her work light duty. In another undated statement, Anastacio Ayalo, husband of a coworker, reported that at noon on a particular day, he heard Ms. Watson tell appellant to work the window alone, although appellant complained that she had not eaten lunch.

In an attending physician’s report dated March 10, 2004, Dr. Guy provided diagnoses of “R/S cervical, L5 radiculopathy.” He reported findings of “neck back tender sprain trigger point.” In response to the question as to whether there was a history or evidence of concurrent or preexisting injury, disease or physical impairment, Dr. Guy checked the “no” box. He stated that appellant injured her neck, back and left shoulder while she was lifting parcels of mail. Indicating that the date of his first examination was November 19, 2003, Dr. Guy opined that appellant was totally disabled from October 29, 2003 through March 10, 2004.

By decision dated July 12, 2005, the hearing representative affirmed the Office’s February 25, 2004 decision, finding that the medical evidence of record was insufficient to support that appellant’s claimed condition was causally related to the October 29, 2003 work-related incident.

Appellant submitted a report dated August 24, 2004 from Dr. Tarek Mardem-Bey, a treating physician, reflecting a diagnosis of “probable bursitis, left shoulder.” He stated that she had pain in her left shoulder that developed in October 2003 when she lifted a parcel.

In a January 17, 2005 report, Dr. Guy indicated that appellant injured her neck, left shoulder, upper, mid and lower back while lifting parcels at work on October 29, 2003. He provided diagnoses of: L4-5 disc bulge; left L4-5 lumbar radiculopathy; cervical radiculopathy (clinical); and traumatic myofascial pain syndrome. Dr. Guy stated that appellant had a history of prior lumbar strain and that her “lower back started to become reagravated.” He indicated that at the time of his January 17, 2005 examination, appellant had severe diffuse tenderness in her neck, as well as severe muscle spasms and multiple trigger points in her back. Dr. Guy reported that a December 29, 2003 magnetic resonance imaging (MRI) scan of the lumbar spine revealed an L4-5 disc bulge and that electromyogram (EMG) studies of her lower extremities revealed evidence of left L4-5 radiculopathy. He opined that appellant “clearly sustained a permanent partial disability causally related to the accident of October 29, 2003.” Dr. Guy further concluded that she was totally disabled from any employment which required lifting

parcels weighing more than five pounds and prolonged sitting or standing for more than one hour at a time.

On May 11, 2005 appellant, by her representative, requested reconsideration, contending that the evidence established the fact of injury. She noted that Dr. Guy's January 17, 2005 report established a causal relationship between the October 29, 2003 work injury and appellant's diagnosed condition.

By decision dated August 26, 2005, the Office denied modification of the July 12, 2004 decision. The Office found that appellant had not submitted sufficient medical evidence to establish a causal relationship between her diagnosed condition and the accepted October 29, 2003 employment incident. The Office concluded that Dr. Guy's January 17, 2005 report failed to provide adequate medical rationale to support his opinion.

LEGAL PRECEDENT

The Federal Employees' Compensation Act¹ provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."³

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of 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 is causally related to the employment injury.⁴ When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at

¹ 5 U.S.C. §§ 8101 *et seq.*

² 5 U.S.C. § 8102(a).

³ 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).

⁴ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁵

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.⁶ An award of compensation may not be based on appellant's belief of causal relationship.⁷ 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 are sufficient to establish a causal relationship.⁸ Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.⁹

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

The Office accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the workplace incident occurred as alleged. The issue, therefore, is whether she has submitted sufficient medical evidence to establish that the employment incident caused an injury. The Board finds that the medical evidence presented does not contain a rationalized medical opinion explaining how the October 29, 2003 incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

Work slips and disability slips from Dr. Guy and other physicians failed to provide a specific diagnosis or an opinion as to causal relationship and, therefore, lack probative value.

⁵ *Deborah L. Beatty*, 54 ECAB 340 (2003). See also *Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). 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).

⁶ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁸ *Florencio D. Flores*, 55 ECAB ____ (Docket No. 04-942, issued July 12, 2004).

⁹ 20 C.F.R. § 10.303(a).

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

The Board has long held 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.¹¹

Similarly, Dr. Marden-Bey's August 24, 2004 report lacks probative value. He opined that appellant had "probable bursitis, left shoulder" that developed in 2003 when she lifted a parcel. Dr. Marden-Bey's diagnosis is speculative. Moreover, he provided no explanation for his stated conclusion that appellant's condition was related to her work injury.

Dr. Guy's narrative reports are also insufficient to establish appellant's claim. His March 10, 2004 attending physician's report provided diagnoses of "R/S cervical, L5 radiculopathy." Dr. Guy opined that appellant was totally disabled October 29, 2003 through March 10, 2004 due to injuries sustained while she was lifting parcels of mail. In response to the question as to whether there was a history or evidence of concurrent or preexisting injury, disease or physical impairment, he checked the "no" box. In a January 17, 2005 report, Dr. Guy indicated that he had first examined appellant on November 19, 2003, approximately three weeks after she injured her neck, left shoulder, upper, mid and lower back while lifting parcels at work on October 29, 2003. He provided diagnoses of: L4-5 disc bulge; left L4-5 lumbar radiculopathy; cervical radiculopathy (clinical); and traumatic myofascial pain syndrome. Contrary to his March 10, 2004 report, Dr. Guy stated that appellant had a history of prior lumbar strain and that her "lower back started to become reaggravated." He indicated that at the time of his January 17, 2005 examination, appellant had severe diffuse tenderness in her neck, as well as severe muscle spasms and multiple trigger points in her back. Dr. Guy reported that a December 29, 2003 MRI scan of the lumbar spine revealed an L4-5 disc bulge, and that EMG studies of her lower extremities revealed evidence of left L4-5 radiculopathy. He opined that appellant "clearly sustained a permanent partial disability causally related to the accident of October 29, 2003." Although he provided results of his examination, Dr. Guy did not provide a complete factual background of the work-related incident or explain how the incident caused or exacerbated appellant's diagnosed conditions. He did not address the inconsistencies between his latest report and his March 10, 2004 attending physician's report regarding the existence of a preexisting condition, nor did he identify the nature of the prior condition or explain why appellant's current condition was not the natural progression of the original condition, rather than a result of the alleged work-related injury. For these reasons, his opinion lacks probative value. Without explanation, Dr. Guy's blanket assertion that appellant's condition was related to the employment injury is insufficient to establish a causal relationship. He is required to explain how her condition was caused or contributed to by the October 29, 2003 employment incident.

In this case, there is insufficient medical evidence of record establishing a causal relationship between a diagnosed condition and the accepted October 29, 2003 work-related incident. The Office advised appellant of the type of medical evidence required to establish her claim; however, she failed to submit such evidence. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed condition and her employment.¹² To establish causal

¹¹ *Michael E. Smith*, 50 ECAB 313 (1999).

¹² *Patricia J. Glenn*, 53 ECAB, 159 (2001).

relationship, appellant must submit a physician's report in which the physician reviews those factors of employment identified by her as causing her condition and, taking these factors into consideration as well as findings upon examination and appellant's medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of her opinion.¹³ She failed to submit such evidence and, therefore, failed to satisfy her burden of proof.

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained a traumatic injury to her lower back in the performance of duty on October 29, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 26 and July 12, 2005 and February 26, 2004 are affirmed.

Issued: April 13, 2006
Washington, DC

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

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

¹³ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).