United States Department of Labor
Employees' Compensation Appeals Board

THERESA J. CROWE, Appellant	)	
and	)	**Docket No. 06-316**
	)	**Issued: April 4, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Indianapolis, IN, Employer	)	

Appearances:
Theresa J. Crowe, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On November 21, 2005 appellant filed a timely appeal of an October 17, 2005 decision of the Office of Workers' Compensation Programs, denying further merit review of a merit decision dated August 18, 2005. 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 has established a back injury in the performance of duty on June 27, 2005; and (2) whether the Office properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 29, 2005 appellant, then a 44-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained a back injury on June 27, 2005 while throwing a box of mail. The reverse of the claim form indicated that appellant stopped work on June 30, 2005. Appellant submitted hospital reports dated June 27, 2005, indicating that she received treatment for back

spasms. The reports are illegible to read and it is not clear if any were signed by a physician. In a note dated July 6, 2005, Dr. Charles Bartley, Jr., an orthopedic surgeon, diagnosed recurrent herniated disc and stated that appellant was unable to work for two weeks.

By letter dated July 18, 2005, the Office requested that appellant submit additional evidence with respect to her claim. Appellant submitted a July 6, 2005 narrative report from Dr. Bartley, who noted that appellant had a prior right side lumbar laminectomy in 1997. He indicated that appellant had been having leg pain and then, the previous Monday, she experienced intense back pain and went to the emergency room. Dr. Bartley stated that appellant needed a magnetic resonance imaging (MRI) scan to determine if she had a reherniated disc. In a July 18, 2005 note, Dr. Bartley reported that the MRI scan revealed some at L4-5 were appellant had her previous surgery, but he did not see a surgical situation because he could not tell how the back had changed since a study in 2004. On August 1, 2005 Br. Bartley reported that appellant's backache had settled down and she could return to work.

In a decision dated August 18, 2005, the Office denied appellant's claim for compensation. The Office found that the medical evidence was insufficient to establish the claim.

Appellant requested reconsideration on August 29, 2005 and submitted medical evidence previously of record. She also submitted a note from Dr. Anne Marie McGriff, a family practitioner, dated June 30, 2005 recommending that appellant be off work from June 30 to July 6, 2005.

By decision dated October 17, 2005, the Office determined that appellant's request for reconsideration was insufficient to warrant further merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time place and in the manner alleged.[2] Appellant must also establish that such event, incident or exposure caused an injury.[3]

In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background,[4] must be one of reasonable medical certainty[5] and

[1] 5 U.S.C. §§ 8101-8193.

[2] *Betty J. Smith,* 54 ECAB 174, 177 (2002).

[3] *Id; see also Abe E. Scott,* 45 ECAB 164 (1993).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon,* 11 ECAB 384, 385 (1960).

must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[6]

ANALYSIS -- ISSUE 1

The Office found that appellant was throwing a box of mail while in the performance of duty on June 27, 2005. Appellant must, however, submit probative medical evidence sufficient to establish an injury causally related to the employment incident. The hospital reports are of no probative value as it is not established that they were signed by a physician.[7] Dr. Bartley diagnosed a recurrent herniated disc in a July 6, 2005 note, but his narrative report of that date did not provide a reasoned medical opinion on causal relationship. He noted that appellant experienced back pain and was treated at the hospital, but he did not discuss the employment activities on June 27, 2005 or provide an opinion on causal relationship of her symptoms to the implicated factor.

It is appellant's burden of proof to submit sufficient medical evidence to establish her claim. In the absence of probative medical evidence on causal relationship, the Board finds that appellant did not meet her burden in this case.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

> "The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --
>
> (1) end, decrease, or increase the compensation awarded; or
>
> (2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[8]

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[6] *Gary L. Fowler*, 45 ECAB 365 (1994).

[7] It is well established that medical evidence lacking proper identification is of no probative medical value. *Thomas L. Agee*, 56 ECAB ___ (Docket No. 05-335, issued April 19, 1985); *Merton J. Sills*, 39 ECAB 572 (1988).

[8] *Eugene F. Butler*, 36 ECAB 393 (1984).

ANALYSIS -- ISSUE 2

Appellant did not submit any new and relevant evidence prior to the October 17, 2005 Office decision.[9] The only new medical evidence was a note from Dr. McGriff that does not discuss the relevant issue of causal relationship with employment. The Board also notes that appellant did not show that the Office erroneously applied or interpreted a specific point of law or constitute a relevant legal argument not previously considered by the Office. Since appellant did not meet any of the requirements of section 10.606(b)(2), the Office properly refused to reopen the claim for merit review.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an injury in the performance of duty on June 27, 2005. The evidence submitted prior to the October 17, 2005 decision was not sufficient to require the Office to reopen the claim for merit review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 17 and August 18, 2005 are affirmed.

Issued: April 4, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[9] The record indicates that appellant did submit new medical evidence after October 17, 2005. Since this evidence was not before the Office at the time of its final decision, the Board cannot review the evidence on this appeal. 20 C.F.R. § 501.2(c).