United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 06-935**
	)	**Issued: August 4, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Reading, MA, Employer	)	

Appearances:
William E. Shanahan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On March 15, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' hearing representative decision dated January 18, 2006, which affirmed the Office's December 30, 2004 decision finding that she failed to establish that she sustained an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issues in this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on September 11, 2004.

FACTUAL HISTORY

On October 29, 2004 appellant, then a 45-year-old supervisor of customer service, filed a traumatic injury claim alleging that on September 11, 2004 she felt a pull in her low back while counting parcels and sustained a herniated disc at L3-4 and sciatica in the right leg. She noted that she had moved two heavy parcels. The employing establishment controverted the claim and alleged that on September 12, 2004 appellant left work to attend a physician's appointment related to a sprained ankle she sustained at home on September 8, 2004.

In a November 19, 2004 statement, Jane McAvoy, a human resources specialist from the employing establishment, controverted the claim. She alleged that appellant had utilized almost all of her sick and vacation leave and waited almost two months before filing her claim.

By letter dated November 29, 2004, the Office advised appellant that additional factual and medical evidence was needed. The Office explained that a physician's opinion was crucial to her claim and allotted appellant 30 days within which to submit the requested information.

In support of her claim, appellant submitted an outpatient registration form dated September 15, 2004, which noted she was seen for back pain. A September 15, 2004 x-ray of the lumbosacral spine, read by Dr. Peter Doss, a Board-certified diagnostic radiologist, revealed mild degenerative changes with no evidence of fracture or dislocation.

In an October 1, 2004 report, Dr. Elizardo P. Carandang, Board-certified in physical medicine and rehabilitation, noted that appellant related that for the past two weeks she experienced some pain across the back radiating towards the top of the right buttock and sometimes along the posterior thigh and calf. He determined that appellant had low back pain with right S1 radicular symptoms, but no neuromuscular deficit. Dr. Carandang noted that the MRI scan findings revealed paracentral bulge at L3-5 which did not correspond to the symptomatology and opined that no neuromuscular deficit was noted. In his November 12, 2004 report, he opined that he was "somewhat at a loss with regards to the etiology of her symptoms. In a December 2, 2004 report, Dr. Carandang advised that appellant was being followed for back pain, noted that appellant was interested in attending a health club and advised that her examination was unremarkable with no neuromuscular deficit.

In a November 19, 2004 statement, Susan Nichols, a coworker, alleged that appellant informed her in early June 2004, that her back was bothering her because her son left a magazine on the floor and that she had slipped and fell down the stairs. She alleged that appellant related that she later went roller blading and the pain "came back."

In a November 22, 2004 bone scan, Dr. Kirwan T. Macmillan, Board-certified in internal medicine, diagnosed normal whole body planar bone scan, and normal simple portal-enhancing configuration tool (SPECT) scan of the lower thoracic and lumbosacral spine and pelvis.

On December 28, 2004 the employing establishment's postmaster controverted appellant's claim. She alleged that appellant was claiming two injuries and referred to the dates of injury as January 27, 2003[1] and September 11, 2004. The postmaster explained that appellant was out from September 11 to November 8, 2004 due to an incident that occurred at her home on September 8 or 9, 2004. She alleged that she only became aware of the September 11, 2004 injury on November 8, 2004 when she received the traumatic injury claim form. The postmaster alleged that appellant's symptoms were due to an injury at her home, and due to her sciatica which appellant had been experiencing since the birth of her son in 1991. She indicated that on September 10, 2004 appellant called in sick because she hurt her ankle after nearly stepping on her cat. The postmaster explained that appellant worked on September 11, 2004 and that on

[1] This claim is not before the Board.

September 13, 2004 she came in but left advising that she was taking "personal leave to go to the doctor." She explained that "[a]t no time during our conversations on September 13[, 2004] did [appellant] report to me injuring herself on September 11[, 2004] but lead me to believe all her problems were related to her ankle injury which she sustained off the job." The postmaster also alleged that appellant did not inform her of a work injury despite numerous opportunities until November 8, 2004, when she had nearly exhausted her sick and annual leave. She noted that appellant participated in numerous hobbies including rollerblading and skiing. The postmaster stated that appellant had informed other employees that she had injured herself at home.

On December 28, 2004 the Office received an undated emergency room report from a physician, whose signature is illegible, which contained a diagnosis of lumbar strain.

By decision dated December 30, 2004, the Office denied appellant's claim. The Office found that the evidence was insufficient to establish that the events occurred as alleged and further denied as the medical evidence did not address the factual history of how the injury occurred.

The Office subsequently received nurse's notes dating from October 15 to November 5, 2004, a note from a therapist, and a September 21, 2004 magnetic resonance imaging (MRI) scan, read by Dr. Lawrence Casha, a Board-certified diagnostic radiologist, and which revealed a paracentral bulge at the L3-4 level. In a January 7, 2005 statement, Cynthia Bradshaw, a nurse practitioner, advised that appellant was seen in follow up for pain which had its onset on "September 11, 2004 while she was pushing a heavy parcel in a hamper at work." On January 17, 2005 appellant provided an explanation for her lateness in filing her claims, explaining that she thought that her injuries would work themselves out on their own.

On January 20, 2005 appellant requested a hearing, which was later changed to a request for an examination of the written record.

In a March 22, 2005 report, Dr. Shihab U. Ahmed, a Board-certified anesthesiologist stated that appellant advised that she had lower back and right extremity pain that she related to "an episode of sensation of a pop when pulling a large object at her work in a post office on September 11, 2004. Since then, she has had back and right proximal lower extremity pain." He noted the pain was fairly constant and was moderate in intensity. Dr. Ahmed opined that appellant had neuropathic pain which might be related to nerve root irritation from a disc bulge and another component of pain which might be related to degenerative disc disease, facet arthropathy or myofascial pain.

In a March 31, 2005 attending physician's report, Dr. Carandang noted that, on September 11, 2004, appellant was pulling an object and developed back and lower extremity pain. He diagnosed low back pain and checked a box "yes" in response to a question as to whether her condition was causally related to the employment. Dr. Carandang filled in "caused due to back pain."

On April 20, 2005 Dr. Ahmed performed a "midline interlaminar L3-4 lumbar epidural steroid injection with fluoroscopy and epidurography." On April 29, 2005 he performed a complete epidurogram.

In an undated statement received by the Office on June 22, 2005, appellant indicated that her injury occurred on September 11, 2004 which was the postmaster's day off. She explained that a similar incident had occurred to her while working on January 27, 2002 concerning a water jug, and she had not filled out any paperwork back then because she thought it would "get worked out."[2] Appellant alleged that, after much testing, she was informed that she had a herniated disc. She alleged that on September 11, 2004 at approximately 8:45 a.m. she was counting parcels for the routes. Appellant alleged that there were two awkward parcels in the hamper and when she pushed and tried to move one of them, she felt a pull in her low back. She alleged that she finished scanning the parcels and went back to her desk. Appellant also alleged that she tried to work out the tension in her low back and took off a few days, but by Wednesday, she went to the emergency room due to the pain.

In an April 8, 2005 attending physician's report, Dr. Savita Patil, Board-certified in internal medicine, noted appellant's history of injury as occurring on September 11, 2004 and noted that she was counting parcels in a hamper when she felt a pull and sharp pain in her low back. He diagnosed a lumbar strain and disc bulge. Dr. Patil checked a box "yes" in response to a question as to whether her condition was causally related to the employment he filled in that "her current symptoms started immediately after the above incident." He opined that appellant was partially disabled from September 14, 2004 to the present.

On June 22, 2005 the Office received a request from appellant's attorney to double her claims. He noted that appellant had filed claims for injuries to the back on October 29, 2004 and January 27, 2003 in addition to the present claim for an injury on September 11, 2004.[3] Additionally, he alleged that the supporting documentation supported that appellant had established her claim.

By letter dated August 30, 2005, appellant's representative alleged that appellant's injury at home was comprised of a trip and fall, and resulted in an injury to her ankle. He explained that she did not injure her back and that trip and fall had nothing to do with the present claim for a back injury. In an August 26, 2005 statement, appellant explained that in June or July she slipped on a magazine on her stairs and slid down two carpeted stairs with her hand on the rail. She alleged that, when she arrived at work, her ankle was swollen and tight from twisting it. Appellant alleged that she told her coworkers, but never thought it would be used against her in a situation that was not "relevant." She alleged that the incident was not serious enough to see her physician, but it was aggravated one day when they were short staffed. Appellant alleged that she did not take any time off from work due to this injury. She also provided a rebuttal to the employing establishment and described the circumstances of her injury.

In an October 11, 2005 report, Dr. Patil noted that appellant was seen for follow up in his office on September 17, 2004 following an injury at work which occurred on September 11, 2004. He noted that appellant related that she was moving a heavy parcel and developed right-sided low back pain with radiation into the right leg. Dr. Patil noted that the

[2] Appellant referred to a claim No. 01-2027627. This was for a January 27, 2003 incident which was denied by decision dated February 9, 2005.

[3] Claim Nos. 01-2029627, 01-2028659.

musculoskeletal and neurological findings were normal on that September 17, 2004 visit and he diagnosed lumbar strain, however; due to the chronic nature of her symptoms, she had an MRI scan, which revealed "paracentral bulge at the L3-4 level which effaces the anterior thecal sac but does not impinge on the central roots or the exiting nerve roots."

By decision dated January 18, 2006, the Office hearing representative affirmed the December 30, 2004 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] 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[5] and that an injury was sustained in the performance of duty.[6] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged by a preponderance of the reliable, probative and substantial evidence.[8] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.[9] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[10]

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[4] 5 U.S.C. §§ 8101-8193.

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

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

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

[8] *Charles B. Ward*, 38 ECAB 667 (1987).

[9] *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[10] *Thelma S. Buffington*, 34 ECAB 104 (1982).

The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[11] The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[12] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.[13]

ANALYSIS

Appellant alleged that on September 11, 2004 she felt a pull in her low back while counting parcels and sustained a herniated disc at L3-4, and sciatica in the right leg in the performance of duty. She noted that there were two heavy parcels that she had moved. Appellant also submitted a statement describing what happened on September 11, 2004. She also alleged that initially she did not realize the severity of her injury, and continued to work or thought that it would work itself out. Although the employing establishment controverted the claim, and alleged that the report was not filed until she had exhausted all of her leave, appellant explained why she had not filed her claim earlier. The employing establishment also submitted a November 19, 2004 statement from Ms. Nichols; however, she discussed appellant's June 2004 injury and noted that her back was bothering her because her son left a magazine on the floor and that she had slipped and fell down the stairs. Appellant later explained that this June 2004 slip and fall, involved two carpeted stairs, that she had her hand on the rail, and it involved her ankle, not her back. The employing establishment also tried to relate her symptoms to sciatica; however, there is no evidence that indicates sciatica was responsible for the incident on September 11, 2004. The Board finds that there is no evidence refuting that the incident occurred, as alleged, by appellant. Therefore, the Board finds that the first component of fact of injury is established; the claimed incident -- that appellant was working on September 11, 2004 and felt a pull in her low back while counting and moving parcels.

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 moving of parcels while at work caused a personal injury on

[11] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[12] *Id*. For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

[13] *Id.*

September 11, 2004. The medical evidence contains no reasoned explanation of how the specific employment incident on September 11, 2004 caused or aggravated an injury.[14]

Appellant submitted several reports by Dr. Carandang. In an October 1, 2004 report, he determined that appellant had low back pain with right S1 radicular symptoms and a paracentral bulge at L3-5 which did not correspond to the symptomatology and a November 12, 2004 report, in which he opined that he was "somewhat at a loss with regards to the etiology of her symptoms. However, these reports are of limited probative value on the relevant issue of the present case in that they do not contain an opinion on causal relationship.[15] In his March 31, 2005 report, Dr. Carandang noted that, on September 11. 2004, appellant was pulling an object and developed back and lower extremity pain and diagnosed low back pain. He checked a box "yes" in response to a question as to whether her condition was causally related to the employment. Dr. Carandang filled in "caused due to back pain." However, he did not explain how he arrived at this conclusion, nor did he note prior problems of sciatica. The checking of a box "yes" in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.[16] The need for rationale in reports supporting causal relationship is especially important in this situation where the physician's more contemporaneous reports noted that appellant's findings did not correspond with her symptomatology and where he noted being "at a loss" regarding the etiology of appellant's condition.

In a March 22, 2005 report, Dr. Ahmed noted that appellant related that she had lower back and right extremity pain related to "an episode of sensation of a pop when pulling a large object at her work in a post office on September 11, 2004" which was followed by continuing back and right leg pain. However, he did not specifically provide his own opinion on the cause of the diagnosed conditions or relate the conditions in this report or any of his subsequent reports, to appellant's September 11, 2004 employment injury and thus his reports are of little probative value.[17]

In an April 8, 2005 report, Dr. Patil noted appellant's history of injury as occurring on September 11, 2004 and noted that she was counting parcels in a hamper when she felt a pull and sharp pain in her low back and diagnosed a lumbar strain and disc bulge. He also checked a box "yes" in response to a question as to whether her condition was causally related to the employment and filled in that "her current symptoms started immediately after the above incident." However, as noted above the checking of a box "yes" in a form report, without

[14] *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).

[15] *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).

[16] *Calvin E. King*, 51 ECAB 394 (2000).

[17] *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

additional explanation or rationale, is not sufficient to establish causal relationship.[18] His other reports did not address causal relationship.

Other reports submitted by appellant do not address causal relationship.

Because the medical reports submitted by appellant do not address how the September 11, 2004 activities at work caused or aggravated a low back condition, these reports are of limited probative value[19] and are insufficient to establish that the September 11, 2004 employment incident caused or aggravated a specific injury.

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 on September 11, 2004.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated January 18, 2006 is affirmed.

Issued: August 4, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

[18] *See supra* note 16.

[19] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).