United States Department of Labor
Employees' Compensation Appeals Board

BARBARA A. BRAND, Appellant	)	
	)	**Docket No. 06-178**
and	)	**Issued: February 13, 2006**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Loganville, GA, Employer	)	

Appearances:
Barbara A. Brand, 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 October 31, 2005 appellant filed a timely appeal of the July 25, 2005 merit decision of the Office of Workers' Compensation Programs, finding that she did not sustain an injury while in the performance of duty. 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 has established that she sustained an injury while in the performance of duty.

FACTUAL HISTORY

On December 8, 2004 appellant, then a 42-year-old rural carrier, filed a traumatic injury claim alleging that on December 6, 2004 she sustained a swollen lower disc in her back with muscle spasms which prevented her from standing up straight. She attributed her condition to getting papers from the bottom of a wire cage. Appellant stopped work on December 7, 2004.

Appellant submitted a December 8, 2004 note from Dr. Roger C. Hawes, a chiropractor, who indicated that she was still experiencing a back condition and was unable to work the next two days. He stated that she could return to work on December 11, 2004. In a December 12, 2004 note, Dr. Hawes indicated that appellant continued to experience problems and that she could not return to work until December 13, 2004. He instructed appellant to rest for two days. On December 15, 2004 Dr. Hawes described the December 6, 2004 incident and diagnosed a lumbosacral strain. He provided appellant's physical restrictions and indicated that he had advised her not to return to work. In a December 7, 2004 note, Dr. Mary Lou Skelton, a chiropractor and associate of Dr. Hawes, indicated that appellant was unable to work on that day and the following day due to a back injury.

In a letter dated December 16, 2004, the employing establishment controverted appellant's claim on the grounds that she failed to submit sufficient medical evidence establishing that she sustained an injury caused by the alleged incident.

By letter dated December 30, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office advised her about the additional factual and medical evidence needed to establish her claim. The Office also requested that the employing establishment submit any medical records regarding the treatment appellant received at its medical facility.

In a January 27, 2005 letter, appellant described the December 6, 2004 incident and subsequent back pain. She was unable to finish casing mail on December 7, 2004 and Margaret Smith, a coworker, told her to see a physician. Appellant asked Phil Haulk, her supervisor, to get someone to finish casing mail and complete her route because she hurt her back on the previous evening. She informed him that she sometimes experienced back pain when she left the employing establishment. Appellant addressed the medical treatment she received from Dr. Hawes, Dr. Glenn J. Freeman, an orthopedic surgeon and Dr. Skelton. She returned to work on December 20, 2004 but experienced continuing back pain.

Appellant submitted an undated statement from Mr. Haulk, who stated that on December 7, 2004 she told him that her back was hurting and that he needed to find someone to complete her route. She experienced regular back pain that improved when she went home and rested. According to appellant, rest did not help her back on Monday and she was unable to work on Tuesday. Mr. Haulk stated that she was going to see her physician and he found someone to take over her route.

In an undated statement, Ms. Smith indicated that on December 7, 2004 appellant came to her case in severe pain and told her that she hurt her back on December 6, 2004. She advised appellant to see a physician.

Attending physicians' reports of Dr. Hawes dated December 17, 2004 and Dr. Skelton dated January 15, 2005 described the December 6, 2004 incident and diagnosed subluxation at L4. They indicated with an affirmative mark that the diagnosed condition was caused by the December 6, 2004 incident and that appellant could return to work on December 27, 2004 with restrictions. Dr. Hawes explained that the low back was the most vulnerable to bending and

twisting motions and more so under a load. He stated that there was a strain on the disc which caused it to swell over several days, resulting in subluxation and pressure on the sciatic nerve.

Dr. Hawes' December 17, 2004 duty status report provided a history of the December 6, 2004 incident and found that appellant sustained a subluxation at L4 and low back pain with muscle spasms. On January 12, 2005 he described the December 6, 2004 incident and noted appellant's complaints of extreme low back and leg pain. Dr. Hawes stated that no x-rays had been taken and diagnosed subluxation with disc strain and spasms with sciatica. He listed appellant's treatment plan and stated that her prognosis was good with no permanent impairment rating at that time.

By decision dated February 3, 2005, the Office found the evidence of record sufficient to establish that the December 6, 2004 incident occurred as alleged, but appellant did not submit medical evidence causally related to the accepted employment incident.

The Office received a January 25, 2005 statement of Beverly Brewbaker, a coworker. On December 6, 2004 she noticed that appellant was not herself. On December 7, 2004 she asked whether appellant was okay because she looked like she had not gotten any sleep the previous night. Appellant responded that she was in pain and Ms. Brewbaker noted that appellant subsequently went home. She could not remember how long appellant was out of work, but recalled that appellant was out for the rest of the week.

On February 8, 2005 appellant requested a review of the written record by an Office hearing representative. The Office received unsigned treatment notes regarding her back condition, which covered intermittent dates from December 7 through 29, 2004. The December 7, 2005 treatment note provided range of motion findings and diagnosed lumbosacral strain, an L4 disc strain with swelling, an L4 subluxation and sciatica.

By decision dated July 25, 2005, an Office hearing representative affirmed the February 3, 2005 decision. The hearing representative found the medical evidence of record insufficient to establish that appellant sustained an injury as a result of the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees Compensation Act[1] 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 applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.[3]

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 or exposure, which is alleged to have occurred.[4] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[5]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[7] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[8]

ANALYSIS

There is no dispute in this case that on December 6, 2004 appellant retrieved papers from the bottom of a wire cage. The Board finds, however, that the medical evidence of record is insufficient to establish that the accepted incident caused an injury.

The notes of appellant's chiropractors, Dr. Hawes and Dr. Skelton, found that she was disabled for work on certain dates. However, these reports are insufficient to establish her claim. Dr. Hawes' December 15, 2004 report diagnosed a lumbosacral strain and found that she was unable to return to her regular work duties. Section 8101(2) of the Act[9] defines the term "physician," to include chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[10] Although they provided a diagnosis of a spinal subluxation at L4,

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[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

[4] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[5] *Linda S. Jackson*, 49 ECAB 486 (1998).

[6] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

[7] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[8] *Charles E. Evans*, 48 ECAB 692 (1997).

[9] 5 U.S.C. § 8101(2).

[10] *See* 20 C.F.R. § 10.400(e) (defining reimbursable chiropractic services). *See Marjorie S. Geer*, 39 ECAB 1099, 1101-02 (1988).

this was not based on any x-ray. Therefore, the Board finds that the chiropractors are not considered physicians and their reports are not probative to whether appellant sustained an injury causally related to the December 6, 2004 employment incident.

Simularly the unsigned treatment notes which covered intermittent dates from December 7 through 29, 2004, are of no probative value because they are not signed by a physician.[11] As the treatment notes lack proper identification, the Board finds that they do not constitute probative medical evidence sufficient to establish appellant's burden of proof.[12]

As there is no rationalized medical evidence of record establishing that appellant hurt her back while in the performance of duty as alleged, she has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 13, 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

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[11] *Ricky S. Storms*, 52 ECAB 349 (2001).

[12] *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (Reports not signed by a physician lack probative value).