

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

TERESA M. URQUIDI, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Spokane, WA, Employer**

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**Docket No. 06-629
Issued: July 6, 2006**

Appearances:
Teresa M. Urquidi, 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 January 9, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 4 and February 23, 2005 merit decisions denying her claim for an employment-related back or hip condition. 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 to establish that she sustained a back or hip condition in the performance of duty.

FACTUAL HISTORY

On November 22, 2004 appellant, then a 45-year-old mail carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained employment-related low back and hip conditions. She first became aware of her claimed condition in October 2004 and realized that it was employment related on November 15, 2004. Appellant stated that the pain in her back and hips gradually got worse and that she experienced pain in her low back and hips while casing

mail on November 22, 2004. She also noted that an attending physician told her that her problems were due to “overcompensating” for her right knee condition.¹ Appellant stopped work on November 22, 2004, returned to work on November 24, 2004, and periodically stopped work thereafter.² The Office had previously accepted that appellant sustained two employment-related knee conditions, dislocation of the right knee (file number A14-2001808) and aggravation of a right medial meniscus tear (file number A14-2022826).³

In a note dated November 22, 2004, Dr. Dale L. Mock, an attending Board-certified family practitioner, stated that appellant could return to work on November 24, 2002. He also noted, “Only if [appellant] is feeling better can she return to work.”

By letter dated December 1, 2004, the Office requested that appellant provide additional factual and medical evidence in support of her claim. The Office stated, “If you believe the back condition is a direct consequence of your knee claim, the consequential injury would need to be claimed under claim A14-2022826.”

In a report dated April 7, 2004, Dr. Howard Shoemaker, an attending Board-certified orthopedic surgeon, stated that appellant reported having chronic right knee pain for “some time” after a surgery and that this pain was exacerbated by her “stepping sideways” at work. He indicated that appellant complained of low back and right hip pain which she first noticed one month prior and that she attributed the right hip pain to her limping. Dr. Shoemaker diagnosed chronic right knee pain, acute right hip and low back pain secondary to gait abnormality, and chronic pain syndrome with delayed recovery and psychological factors affecting her physical recovery. He stated:

“She certainly could be a candidate for a lumbar MRI [magnetic resonance imaging] [scan] given her recent low back and hip pathology and also possibly a hip x-ray would be warranted; although these would not medically reasonably be considered work related since her mechanism of injury was such that it should cause, nor did it cause originally or any low back or hip pain; it was strictly right knee pain. I believe the most likely situation is that she is having some gait abnormality and muscle imbalance due to her limping on the right knee that is transferring into her hip and back.”⁴

By decision dated January 4, 2005, the Office denied appellant’s claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a back or hip

¹ The claim was given the file number A14-2035828.

² At the time she filed her claim, appellant had been working in a limited-duty position for the employing establishment.

³ Appellant underwent surgery on her right knee in July 2001. The aggravation of a right medial meniscus tear occurred on July 5, 2003, but it is unclear when the dislocation of the right knee occurred.

⁴ Dr. Shoemaker also stated, “I do not really feel that there is any significant new injury from the work-related incident that can be defined by any objective measurements.” He did not identify the “work-related incident” to which he referred. Appellant continued to submit statements in which she indicated that Dr. Shoemaker told her that her back and hip problems were due to the fact that she was favoring her right leg.

condition in the performance of duty. The Office again advised appellant that it considered her November 2004 claim to be a claim for a new injury and that if she felt that her claimed condition was a direct consequence of her accepted knee injury she would have to file a consequential injury claim under file number A14-2022826.

In an undated letter received by the Office on January 28, 2005, appellant requested reconsideration of her claim. She submitted a January 26, 2005 report in which Dr. Mock stated that she was initially treated for a knee injury “but was not properly worked up for a concomitant injury to her back.” He stated that diagnostic testing showed that she had a herniated nucleus pulposus at L5-S1. Appellant also submitted brief treatment notes dated between October 2004 and January 2005.⁵

By decision dated February 23, 2005, the Office affirmed its January 4, 2005 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act⁶ 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, 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 are causally related to the employment injury.⁷ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion 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

⁵ None of the notes contained a complete signature of a physician.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

Appellant claimed that she sustained employment-related low back and hip conditions due to employment factors over a period of time. She first became aware of increased back and hip pain by October 2004 and experienced pain in her low back and hips while casing mail on November 22, 2004. The Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained a back or hip condition in the performance of duty.¹⁰

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a back or hip condition in the performance of duty.

Appellant submitted an April 7, 2004 report in which Dr. Shoemaker, an attending Board-certified orthopedic surgeon, stated that she complained of low back and right hip pain which she first noticed one month prior. He diagnosed chronic right knee pain, acute right hip and low back pain secondary to gait abnormality, and chronic pain syndrome with delayed recovery and psychological factors affecting her physical recovery. Dr. Shoemaker stated, "I believe the most likely situation is that she is having some gait abnormality and muscle imbalance due to her limping on the right knee that is transferring into her hip and back." His report is of limited probative value on the relevant issue of the present case in that he did not provide a clear opinion that appellant sustained a new back or hip injury due to her work duties in late 2004. Dr. Shoemaker did not describe appellant's work duties in any detail or explain how they could have caused her to sustain a back or hip condition. He reported limited findings on examination with respect to appellant's back and hips and he did not provide a clear diagnosis of a specific condition relating to her back or hips. Moreover, Dr. Shoemaker stated, "I do not really feel that there is any significant new injury from the work-related incident that can be defined by any objective measurements."¹¹

Appellant also submitted a November 22, 2004 note in which Dr. Mock, an attending Board-certified family practitioner, stated that she could not work from November 22 to 24, 2002. In a January 26, 2005 report, Dr. Mock stated that appellant was initially treated for a knee injury "but was not properly worked up for a concomitant injury to her back." He noted

⁹ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

¹⁰ The Board notes that appellant has also claimed that her back and hip problems were a consequence of her favoring her right leg due to her accepted right knee injury. The Office explicitly advised appellant on several occasions that it considered her November 2004 claim to be a claim for a new injury and that if she felt that her claimed condition was a direct consequence of her accepted knee injury she would have to file a consequential injury claim under file number A14-2022826. It is unclear whether appellant has filed a consequential injury claim under file number A14-2022826, but this matter is not currently before the Board. The record does not contain a final decision of the Office concerning any claim that appellant sustained a back or hip injury as a consequence of her accepted right knee injury. See 20 C.F.R. § 501.2(c).

¹¹ Dr. Shoemaker did not identify the "work-related incident" to which he referred.

that diagnostic testing showed that she had a herniated nucleus pulposus at L5-S1. Dr. Mock did not, however, provide a clear opinion that appellant sustained a back or hip condition due to work duties in late 2004 and his reports are of limited probative value on the main issue of the present case.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a back or hip condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 23 and January 4, 2005 decisions are affirmed.

Issued: July 6, 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