

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

JEANNE M. FLETCHER, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Venice, FL, Employer**

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**Docket No. 06-818
Issued: June 21, 2006**

Appearances:
Jeanne M. Fletcher, pro se
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 February 23, 2006 appellant filed an appeal from a decision of the Office of Workers' Compensation Programs dated February 7, 2006, in which an Office hearing representative affirmed the Office's January 12, 2005 decision denying appellant's 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 has met her burden of proof to establish that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On November 9, 2004 appellant, then a 45-year-old clerk, filed a traumatic injury claim alleging that on that date she experienced pain in the low back, hips, both legs and shoulders while removing mail from tubs. Appellant stopped work on November 9, 2004. In a narrative report attached to the claim, she stated that she had two microdiscectomies in the summer of 2004 and that her physician imposed medical restrictions as a result of her surgeries. Appellant experienced pain in her lower back, hips, down both legs and the shoulders whether she stood or

sat. Her work required that she constantly bend and reach into an undeliverable business bulk mail (UBBM) tub to lift mail for sorting. In a note dated November 18, 2004, Dr. Ashvin I. Patel, an attending Board-certified orthopedic surgeon, stated that appellant would remain off work until after surgery.

On November 17, 2004 appellant advised the employing establishment that the postsurgical recuperation period from her July and August surgeries would take longer than expected and that Dr. Patel set restrictions against bending, lifting and twisting. She contended that her current assignment caused pain to radiate into the lower back, hips and legs and requested that she be assigned to other jobs to accommodate her recuperation period.

On November 29, 2004 the employing establishment stated that it had assigned work consistent with appellant's medical restrictions of no lifting over 15 pounds, no climbing including stair climbing, no squatting and no window service. It added that appellant's physician, Dr. Patel, did not impose restrictions against bending or twisting. Appellant's assignment to work bulk mail tubs did not require bending to get mail and she was never denied additional support for her work. It was noted that the bulk mail tubs could be tilted to make mail more easily accessible which would preclude twisting movements. The employing establishment also noted that a claim for compensation was denied on June 22, 2004, and that it provided light-duty work for a nonwork-related condition.¹

By letter dated December 2, 2004, the Office informed appellant of the evidence needed to support her claim and requested that she submit such evidence within 30 days.

On December 8, 2004 Dr. Patel stated that appellant was to remain off work until January 6, 2005. On December 10, 2004 Dr. Patel noted appellant's history of injury which included surgeries of July 8 and August 26, 2004 for a right L5-S1 microdiscectomy that completely resolved her condition. After appellant returned to work at the service window she "apparently" had an onset of increased back pain and right lower extremity pain that required an anterior lumbar fusion at L5-S1 on December 1, 2004. In a follow-up appointment, appellant stated that her radicular symptoms had resolved but that she remained symptomatic with low back pain.

By decision dated January 12, 2005, the Office denied appellant's claim. It found that, although the work activities occurred as alleged on November 9, 2004, the medical evidence did not establish that the accepted incidents caused her diagnosed back condition.

On January 27, 2005 appellant requested an oral hearing and submitted a January 6, 2005 report from Dr. Patel excusing her from work until February 17, 2005. She also submitted a claim for compensation from November 5 to December 31, 2004. The Office held the hearing on November 22, 2005 at which time the hearing representative provided appellant 30 days to submit additional medical evidence. On January 6, 2006 the employing establishment stated that it had assigned appellant light-duty work due to a nonwork-related condition and that she was

¹ The record includes an August 18, 2004 decision of the Office, denying a claim for an alleged June 22, 2004 work-related injury.

working in that position on November 9, 2004 when she filed her current claim for a work-related injury.

By decision dated February 7, 2006, the Office hearing representative affirmed the January 12, 2004 decision, finding that the work incidents on November 9, 2004 occurred but that appellant failed to establish that the work incidents caused her diagnosed medical condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between the disability or the medical condition and employment.⁷ To establish causal relationship, appellant must submit a physician's report that reviews and considers employment factors identified by appellant as causing the disability or medical condition as well as findings upon examination of appellant and medical history, state whether the employment injury caused or aggravated appellant's diagnosed condition or conditions and present medical rationale in support of his or her opinion.⁸

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.*

⁷ *Donald W. Long*, 41 ECAB 142 (1989).

⁸ *Id.*

ANALYSIS

The Office accepted that appellant was removing mail from tubs on November 9, 2004; however, she submitted insufficient medical evidence to establish that her diagnosed back condition was caused or aggravated by her work activities on that date.

In reports dated November 17, 2004 to January 6, 2005, Dr. Patel held appellant off work due to her back complaints. He subsequently noted an additional surgery of December 1, 2004. However, these reports are essentially leave slips that lack probative value in that Dr. Patel did not list a specific diagnosis, nor did he relate her medical condition to the accepted employment incidents. He failed to address the causal relationship between appellant's ongoing back condition and the accepted incident.⁹

In his December 10, 2004 report, Dr. Patel noted appellant's history of injury including her right L5-S1 microdiscectomy surgeries in July, August and December 1, 2004. He reported her continuing symptoms of low back pain which he stated "apparently" began when she was "working the window." However, appellant's statement does not indicate that she was working the window when the claimed injury occurred but that she was removing mail from tubs as part of her light-duty assignment. Furthermore, to the extent that this statement supports causal relationship between the claimed condition and the employment, it is couched in speculative terms, noting that "apparently" there was an onset of a pain.¹⁰ Dr. Patel did not otherwise explain how the act of removing mail from a tub on the date in question would cause or aggravate her back condition. This report is of diminished probative value and insufficient to meet appellant's burden of proof.

Appellant expressed her belief that her diagnosed condition resulted from her assigned duties to sort mail from the bulk mail tubs. The record, however, clearly shows a significant history of a preexisting back condition for which she underwent two surgeries in a five-week period in July and August 2004. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹¹ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹² Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. Therefore, her belief that her condition was caused by the alleged work-related injury is not determinative.

⁹ See *Michael E. Smith*, 50 ECAB 313, 316-17 (1999).

¹⁰ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

¹¹ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹² *Id.*

There is insufficient medical evidence addressing how appellant's back condition was caused or aggravated by her employment. She has not met her burden of proof in establishing that she sustained a work-related injury in the performance of duty.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 7, 2006 is affirmed.

Issued: June 21, 2006
Washington, DC

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

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