United States Department of Labor
Employees' Compensation Appeals Board

SHERI A. THEDFORD, Appellant	)	
and	)	**Docket No. 06-210**
	)	**Issued: March 1, 2006**
U.S. POSTAL SERVICE, SHERMAN MAIN POST OFFICE, Sherman, TX, Employer	)	

Appearances:
Sheri A. Thedford, 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 November 7, 2005 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 10, 2005, denying her traumatic injury claim on the grounds that causal relationship was not established. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained a back injury causally related to an accepted May 19, 2005 incident.

FACTUAL HISTORY

On May 20, 2005 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1), asserting that she sustained pain in her lower back while placing mail in a mailbox on May 19, 2005. She stopped work on May 20, 2005 and resumed work in a light-duty capacity on or before July 13, 2005.

Appellant submitted May 20, 2005 emergency room intake forms noting that on May 19, 2005 she "hurt back at work." Dr. Patrick Brown, an attending Board-certified otolaryngologist, noted that appellant was "delivering mail yesterday -- pain with twisting, then sneezed, continuous pain." He obtained lumbar x-rays showing degenerative disc disease from L4-S1. Dr. Brown diagnosed an acute lumbar myofascial strain and prescribed medication. He held appellant of work through May 22, 2005.

In May 23, June 10 and 20, 2005 duty status reports, Dr. John Ferrell, an attending physician specializing in emergency medicine, diagnosed a lumbar strain and checked a box "yes" indicating his support for causal relationship.[1]

In a July 6, 2005 letter, the Office advised appellant that the medical record did not support that she sustained an injury in the performance of duty as alleged. The Office noted that the evidence did not contain a diagnosis of any condition resulting from the May 19, 2005 incident or an explanation of how the identified work factors would cause the claimed injury. The Office advised appellant that submitting a detailed, rationalized narrative report from her attending physician was crucial to her claim.

Appellant submitted additional reports from Dr. Ferrell. In duty status reports dated May 27, June 27 and July 11, 2005, he diagnosed a lumbar strain and checked a box "yes" indicating his support for causal relationship. In a July 13, 2005 narrative report, Dr. Ferrell provided a history of injury of "onset of mild low back pain on May 19, 2005 after twisting and reaching to deliver mail into a mailbox. Approximately 30 minutes later while still walking her delivery route, appellant sneezed and noticed onset of severe back pain." Dr. Ferrell noted findings on examination of limited lumbar motion and tenderness over the spinous processes from L4 to S1. He opined that the diagnosis of lumbar strain was "a direct result of twisting at the waist and reaching simultaneously," apparently "exacerbated by the jarring of appellant's low back while sneezing." Dr. Ferrell estimated that the period of disability was 6 to 10 weeks.

In a July 22, 2005 letter, appellant asserted that on May 19, 2004 she "twisted to put mail in a box and experienced pain." She finished out the day but that night her pain became severe."[2]

By decision dated August 10, 2005, the Office denied appellant's claim on the grounds that causal relationship was not established. The Office accepted that the May 19, 2005 incident

[1] Appellant also submitted June 10 and 20, 2005 chart notes and slips signed by Patty Shahan, a physician's assistant. The Federal Employees' Compensation Act, at 5 U.S.C. § 8101(2), provides that medical opinion, in general, can only be given by a qualified physician. As physicians' assistants are not physicians as defined under the Act, their opinions are of no probative value. *Roy L. Humphrey*, 57 ECAB ___ (Docket No. 05-1928, issued November 23, 2005).

[2] Appellant also submitted June 27 and July 11, 2005 chart notes signed only by Ms. Shahan. These notes do not constitute medical evidence and are of no probative value. *Roy L. Humphrey*, *supra* note 1.

occurred as alleged but that the medical evidence submitted did not establish a causal relationship between that incident and the claimed back injury.[3]

LEGAL PRECEDENT

An employee seeking benefits under the 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 filed within the 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.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

ANALYSIS

The Office accepted that on May 19, 2005 appellant delivered mail as alleged. The Office accepted that she twisted or reached while delivering the mail that day.

In support of her claim, appellant submitted May 20, 2005 emergency room reports from Dr. Brown, an attending Board-certified otolaryngologist, diagnosing an acute lumbar strain due to twisting while delivering mail then sneezing on May 19, 2005. She also submitted reports from Dr. Farrell, an attending physician specializing in emergency medicine. In duty status reports from May 23 to July 11, 2005, he checked a box "yes" indicating his support for causal relationship. While checking a box "yes" in the absence of supporting rationale is of little probative value in establishing causal relationship,[9] Dr. Ferrell amplified his opinion in a July 13,

[3] Following issuance of the Office's August 10, 2005 decision, appellant submitted additional evidence. The Board may not review evidence for the first time on appeal that was not before the Office at the time it issued its final decision in the case. She may submit such evidence to the Office pursuant to a request for reconsideration.

[4] 5 U.S.C. §§ 8101-8193.

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

[6] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *Gary J. Watling*, 52 ECAB 278 (2001).

[8] *Deborah L. Beatty*, 54 ECAB 340 (2003).

[9] *Lillian Jones*, 34 ECAB 379 (1982).

2005 narrative report. He explained that the lumbar strain was "a direct result of twisting at the waist and reaching simultaneously" while delivering mail on May 19, 2005, apparently "exacerbated by the jarring of her low back while sneezing."

The two physicians of record both supported causal relationship. Although their opinions are not sufficiently rationalized[10] to meet appellant's burden of proof in establishing her claim, they stand uncontroverted in the record and are, therefore, sufficient to require further development of the case by the Office.[11]

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.[12] The Board will remand the case to the Office for further development regarding Dr. Brown's and Dr. Ferrell's opinion that reaching or twisting while delivering mail caused the diagnosed lumbar strain. If Dr. Brown and Dr. Ferrell cannot provide such a report, the case should be referred to an appropriate specialist to obtain a rationalized opinion as to whether the identified work factors were competent to cause the diagnosed lumbar sprain.

CONCLUSION

The Board finds that the case is not in posture for a decision. The case must be remanded to the Office for further development.

[10] *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value).

[11] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

[12] *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 10, 2005 is set aside and the case remanded for further development consistent with this opinion.

Issued: March 1, 2006
Washington, DC

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

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