United States Department of Labor
Employees' Compensation Appeals Board

E.K., Appellant	)	
and	)	**Docket No. 06-1459**
	)	**Issued: October 18, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Sioux City, IA, Employer	)	

Appearances:
Martin Ozga, Esq., for the appellant
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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 8, 2006 appellant filed a timely appeal of the April 20, 2006 merit decision of the Office of Workers' Compensation Programs denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an occupational injury in the performance of duty.

FACTUAL HISTORY

This is the second appeal before the Board in this case. By decision dated October 11, 2005, the Board found that the case was not in posture for a decision regarding whether appellant sustained an injury in the performance of duty. It remanded the case to the Office for further

development. The law and the facts of the case as set forth in the Board's October 11, 2005 decision are hereby incorporated by reference.[1]

On August 16, 2003 appellant, a 43-year-old part-time flexible clerk, filed an occupational disease claim for pain in her lower back and left leg and tingling and numbness in her left foot due to repeated bending and lifting.[2] In an undated narrative statement, she contended that she began to experience back pain shortly after being assigned to a flat-sorting machine. Appellant reported that her work required her to reach and lift flats; to twist and turn constantly; to sweep bins down; and to push tubs on conveyor belts. Appellant stated that she had been injured on the job in March 2000 and treated by Dr. David. J. Barnes, a Board-certified family practitioner.

In a report dated September 5, 2003, Dr. Barnes diagnosed radicular back pain. Having examined appellant on August 12, 2003, he provided a detailed history of her condition. Dr. Barnes indicated that appellant did not recall a specific injury, but began experiencing pain after she was transferred to the flat-sorting machine, which required her to push and lift bins of mail. He found no back pain to palpation; fairly good range of motion of the back; some discomfort on straight leg raising at 80 to 90 degrees; deep tendon reflexes 2+ throughout, except for trace to 1+ in the left Achilles; and no obvious weakness or muscle atrophy. Dr. Barnes stated that x-rays of the lumbar spine showed some decrease in normal lordosia and that a magnetic resonance imaging (MRI) scan of the lumbar spine showed L4-5 mild broad posterior disc herniation producing mild central canal stenosis with bilateral mild facet hypertrophy and no foraminal encroachment. He opined that appellant's employment "caused or at least aggravated" her back pain, explaining that her activities at work caused a lot of stress in appellant's lower back and that she did not have a history of prior back problems or a history of activities outside of work that would likely cause her back pain. Dr. Barnes suggested that a neurologist would be able to "provide some further information regarding the likelihood that [appellant's] employment activities caused or worsened her back problems."

By decision dated October 22, 2003, the Office denied appellant's claim on the grounds that there was no medical evidence of a diagnosed back condition or a rationalized medical opinion relating appellant's condition to her federal employment.

Appellant submitted additional medical evidence, including an August 25, 2003 MRI scan report; August 12, 2003 notes signed by Dr. Barnes reflecting his opinion that nerve impingement was causing her radicular problems; a December 8, 2003 disability slip signed by Dr. Quentin J. Durward, a Board-certified neurological surgeon; a December 8, 2003 duty status report signed by Dr. Durward, which provided diagnoses of displacement of lumbar and low back pain. In a report dated May 24, 2004, Dr. Durward provided a diagnosis of degenerative disc disease at L4-5 with radiculopathy. He opined that lifting and bending at work "exacerbated and may have been the cause of [appellant's] degenerative changes." Notes from Dr. Barnes

[1] Docket No. 05-1395 (issued October 11, 2005).

[2] Appellant alleged that she sustained a work-related back injury in approximately March 2000. However, the record does not contain evidence that a claim was filed for such injury.

dated March 16 and March 30, 2000 reflected that appellant was being rechecked for lower back pain related to a prior injury. An unsigned report from Dr. Durward dated October 27, 2003 reflected his opinion that appellant's lifting, bending and walking on hard surfaces at work exacerbated her pain at L4-5 level and "may have been the cause of degenerative changes." Dr. Durward also stated that appellant had a history of an injury at the employing establishment in 1998 that had resolved with time and conservative treatment.

By letter dated October 6, 2004, appellant, through her representative, submitted an application for reconsideration.

In support of her request, appellant provided previously submitted medical documents and treatment notes dated May 30, June 13 and July 31, 2003 initialed by Dr. Afana. On May 30, 2003 Dr. Afana related her complaints of lower back pain which occurred after duties associated with her job, including bending, carrying boxes and sorting mail. On July 31, 2003 he reported that appellant's back pain was improving and that she had played golf once or twice. Appellant also submitted an August 13, 2003 report of an MRI scan of the lumbar spine which reflected early mild degenerative changes at L4-5 and L5-S1, no compression fractures and well-maintained disc spaces.

By decision dated January 11, 2005, the Office denied modification of its October 22, 2003 decision.

On June 20, 2005 appellant filed an appeal to the Board from the Office's January 11, 2005 decision. By decision dated October 11, 2005, the Board found that the case was not in posture for a decision and remanded the case to the Office for a second opinion examination, in order to obtain a rationalized opinion as to whether appellant's current condition was causally related to her employment.

On November 2, 2005 the Office referred appellant, together with a statement of accepted facts, to Dr. Thomas Connolly, a Board-certified orthopedic surgeon. It asked him to provide a current diagnosis and a rationalized opinion as to whether she developed an orthopedic condition as a result of her federal employment.

In a December 12, 2005 report, Dr. Connolly noted that appellant had a prior history of a lower back injury in 2000 and a "new injury to her lower back while working sorting machines for the employing establishment in November 2004." His examination revealed tenderness in the low back; good forward flexion and the ability to flex fingertips to the floor; and intact sensation. Straight leg raising produced hamstring tightness of approximately 80 degrees. Deep tendon reflexes were 2+/4+. Dr. Connolly provided a diagnosis of chronic low back pain with L5-S1 nerve root irritation. He opined that appellant did develop an orthopedic condition from the performance of her duties as a clerk at the employing establishment, as described in the statement of accepted facts. However, there were no objective findings to support his conclusion other than history and tenderness to palpation. In a December 12, 2005 addendum to his second opinion report, Dr. Connolly opined that appellant's symptoms were credible and genuine and not "consistent with malingering or self-engineering of her condition."

In a December 13, 2005 work capacity evaluation, Dr. Connolly indicated that appellant could work eight hours per day with restrictions.

On December 21, 2005 the Office asked Dr. Connolly to provide a more definite diagnosis and the basis from his examination findings to establish that appellant had left nerve root irritation.[3]

In an April 10, 2006 report, Dr. Connolly stated, "From my exam[ination], the chief diagnosis should be chronic low back pain." He indicated that he "should have been clearer that there were no objective findings to support a diagnosis of left L5 nerve root irritation beyond history." Noting that an August 25, 2003 MRI scan of the lumbar spine showed broad posterior disc herniation with bilateral facet hypertrophy at L4-5, Dr. Connolly stated that it was reasonable to conclude that appellant was having low back pain. He opined that she should continue light duty, in that increased activity would cause more complaints of pain.

In an April 20, 2006 decision, the Office denied modification of its January 11, 2005 decision, finding that the medical evidence did not establish that appellant had sustained an injury in the performance of duty. The Office noted that Dr. Connolly had provided no objective findings to support a diagnosed condition resulting from factors of federal employment.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which she claims compensation is causally related to the employment injury.[5] In an occupational disease claim, to establish that an injury was sustained in the performance of duty, 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

[3] In a February 13, 2006 letter to appellant's attorney, the Office indicated that a request for clarification had been made to Dr. Connolly on December 21, 2005. However, the Board notes that the request is not contained in the file.

[4] 5 U.S.C. § 8101 *et seq.*

[5] 20 C.F.R. § 10.115(e), (f) (1999). *See Gary M. DeLeo*, 56 ECAB ___ (Docket No. 05-1099, issued August 8, 2005). *See also Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996) (Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence). *See Robert G. Morris*, 48 ECAB 238 (1996) (A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant). *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[7]

Medical conclusions unsupported by rationale are of little probative value.[8] An award of compensation cannot be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.[9]

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[10] Once the Office has begun an investigation of a claim, it must pursue the evidence as far as reasonably possible.[11] The Board has stated that, when the Office selects a physician for an opinion on causal relationship, it has an obligation to secure, if necessary, clarification of the physician's report and to have a proper evaluation made.[12] When the Office refers appellant for a second opinion examination and the physician's report does not adequately address the issues at hand, the Office has a responsibility to secure a report on the relevant issues.[13]

ANALYSIS

The Office referred appellant to Dr. Connolly for a second opinion evaluation. In a December 12, 2005 report, Dr. Connolly provided a diagnosis of chronic low back pain with L5-

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[6] *Victor J. Woodhams, supra* note 5.

[7] *John W. Montoya*, 54 ECAB 306 (2003).

[8] *Willa M. Frazier*, 55 ECAB ___ (Docket No. 04-120, issued March 11, 2004).

[9] *John D. Jackson*, 55 ECAB ___ (Docket No. 03-2281, issued April 8, 2004); *see also Michael E. Smith*, 50 ECAB 313, 317 (1999).

[10] *John J. Carlone*, 41 ECAB 354, 359-60 (1989).

[11] *Edward Schoening*, 41 ECAB 277, 282 (1989).

[12] *Steven P. Anderson*, 51 ECAB 525, 534 (2000).

[13] *Peter C. Belkind*, 56 ECAB ___ (Docket No. 05-655, issued June 16, 2005). *See also Robert Kirby*, 51 ECAB 474, 476 (2000).

S1 nerve root irritation and opined that appellant developed an orthopedic condition from the performance of her federal duties. However, he noted that there were no objective factors to support the condition. The Office requested clarification, including a more specific diagnosis and the basis used to conclude that appellant had left nerve root irritation. In an April 10, 2006 supplemental report, Dr. Connolly stated that "the chief diagnosis should be chronic low back pain" and reiterated that there were no objective findings to support a diagnosis of L5 nerve root irritation. Noting that appellant's August 25, 2003 MRI scan of the lumbar spine showed broad post disc herniation with bilateral facet hypertrophy at L4-5, Dr. Connolly stated that it was reasonable to conclude that appellant was having low back pain. However, he did not explain how she developed an orthopedic condition from the performance of her federal duties, as he opined in his December 12, 2005 report, nor did he discuss appellant's preexisting back condition as reflected in the reports of Dr. Barnes and Dr. Durward, as well as in an earlier MRI scan. As Dr. Connolly's report is not based on a complete medical and factual background and is unsupported by medical rationale, it is of diminished probative value.[14]

The Office undertook development of the medical evidence by referring appellant to Dr. Connolly for a second opinion examination. It has an obligation to secure a report adequately addressing the relevant issue of whether appellant sustained an injury causally related to her employment.[15] The case will be remanded for further development of the medical evidence.

CONCLUSION

The Board finds that the case is not in posture for decision. On remand, the Office should develop the medical evidence to determine whether appellant sustained any injury resulting from employment duties. After such development as the Office deems necessary, it should issue an appropriate decision in order to protect appellant's rights of appeal.

[14] *Willa M. Frazier*, 55 ECAB ___ (Docket No. 04-120, issued March 11, 2004).

[15] *Peter C. Belkind*, *supra* note 13.

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2006 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: October 18, 2006
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board