United States Department of Labor
Employees' Compensation Appeals Board

B.W., Appellant	)	
and	)	**Docket No. 07-749**
	)	**Issued: July 10, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Glenside, PA, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 24, 2007 appellant filed a timely appeal from a January 4, 2007 merit decision of the Office of Workers' Compensation Programs that denied her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty.

FACTUAL HISTORY

On September 27, 2006 appellant, then a 35-year-old mail carrier, filed a traumatic injury claim alleging that she sustained lower back pain while lifting a tray from the rear of a truck on September 21, 2006. She stopped work on September 22, 2006 and returned to part-time limited duty on November 1, 2006.

Appellant submitted a September 27, 2006 report from Dr. Mitchell K. Freedman, an osteopath, who diagnosed "exacerbation of lumbar radiculopathy" but did not comment on causation or the circumstances under which appellant's condition arose. In an October 25, 2006 duty status report, Dr. Freedman noted appellant's work restrictions. He also provided an October 25, 2006 report diagnosing lumbar radiculopathy.

On November 28, 2006 the Office advised appellant of the factual and medical evidence needed to establish her claim. The Office advised her to submit medical evidence addressing how her claimed condition was due to her claimed employment activity. In a November 30, 2006 statement, appellant explained that she was rotating trays of mail in a truck and that one tray "began to bend in middle, tried to catch it, between 30-40 lbs." She claimed that after she caught the tray of mail she experienced back pain. Appellant related her back pain to aggravation of "an old injury."

In an October 25, 2006 narrative report, Dr. Freedman noted that appellant reported achy and sharp back pain. He conducted a physical examination and noted that a magnetic resonance imaging (MRI) scan from June 2006 revealed disc degeneration at L5-S1 and a left-sided paracentral disc herniation at L4-5. Dr. Freedman explained that appellant had previously had two lumbar surgeries and "now has a lumbar radiculopathy on the left more than the right." He also stated that appellant had reached maximum medical improvement.

By decision dated January 4, 2007, the Office denied appellant's traumatic injury claim on the grounds that she submitted insufficient medical evidence to establish that she sustained a work-related injury.[1]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every 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 must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually

[1] The Office also noted that appellant had a lumbosacral strain on July 28, 2003, which was accepted under case file number 032014949. The other claim is not before the Board on the present appeal.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

experienced the employment incident at the time, place and in the manner alleged.[5] 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.[6]

The medical evidence required to establish causal relationship generally 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.[7] The opinion of the physician must be based on a complete factual and medical background of the claimant[8] and must be one of reasonable medical certainty[9] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10]

ANALYSIS

The Board finds that appellant did not meet her burden of proof in establishing that she sustained an injury in the performance of duty. The Office found that an employment incident occurred on September 21, 2006, when appellant tried to catch a tray of mail. Appellant submitted medical evidence from Dr. Freedman, who diagnosed aggravation of lumbar radiculopathy. However, the Board finds that the medical evidence does not establish a causal relationship between appellant's diagnosed condition and the accepted employment condition.

In a September 27, 2006 form report, Dr. Freedman diagnosed exacerbation of lumbar radiculopathy but did not address the circumstances of the September 21, 2006 incident or relate the diagnosed condition to an incident at work. His October 25, 2006 report did not discuss causation. Dr. Freedman's October 25, 2006 duty status report noted work restrictions but did not address causal relationship. On October 25, 2006 he noted that appellant had a history of two prior lumbar spine surgeries and indicated that an MRI scan obtained prior to the September 21, 2006 incident revealed disc degeneration and herniation of the lumbar spine. Dr. Freedman noted a current diagnosis of lumbar radiculopathy. He did not address the September 21, 2006 employment incident or otherwise discuss how any diagnosed condition was caused or aggravated by such employment incident. Consequently, Dr. Freedman's reports are of limited probative value in establishing appellant's claim.[11]

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

[6] *Id.*

[7] *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[8] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

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

[10] *Judy C. Rogers*, 54 ECAB 693 (2003).

[11] *See, e.g., Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

Accordingly, the Board finds that the medical evidence is insufficient to establish that appellant's diagnosed lumbar radiculopathy was caused or aggravated by her lifting mail trays on September 21, 2006.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2007
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