United States Department of Labor
Employees' Compensation Appeals Board

H.H., Appellant	)	
and	)	**Docket No. 07-1798**
	)	**Issued: April 11, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Appleton, WI, 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 June 22, 2007 appellant filed a timely appeal from the August 2, 2006 decision of the Office of Workers' Compensation Programs denying her occupational disease claim. On January 10, 2007 the Office issued a nonmerit decision denying further review of the claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that she sustained an injury causally related to factors of her federal employment; and (2) whether the Office properly denied further review of the merits of appellant's claim.

FACTUAL HISTORY

On May 3, 2006 appellant, then a 29-year-old letter carrier, filed an occupational disease claim, Form CA-2, alleging that her regular duties aggravated her lumbar sprain and the pain in her thoracic spine, sacroiliac (SI) joint and legs. Her duties included heavy lifting, bending,

carrying a satchel weighing up to 45 pounds, driving, standing, sorting mail and walking six to eight miles per day. Appellant became aware of her condition on June 7, 2004 and realized that her employment aggravated it in November 2004.

In a narrative statement, appellant noted that her back problems began when she worked as a letter carrier in Ventura, California, shortly before transferring to Wisconsin. While she was lifting a tray of mail from the cargo area of her truck, her back stiffened up. When appellant notified her supervisors, they told her that her transfer would be in jeopardy and that she would be disciplined if she reported her injury. To accommodate her, they allowed her to work in a different position. Appellant's physician diagnosed lower back strain.

Following appellant's transfer to Wisconsin two months later, her back pain was tolerable and she worked to complete her assignments quickly. On Saturday, November 20, 2004, her back stiffened completely while she was driving her route. When appellant returned to the employing establishment, her supervisor noticed that she could not stand up straight. Because she assumed the back pain would diminish, as it did before, she told him that she would be alright if she rested her back. Because appellant was still in pain the following Monday, the employing establishment sent her to the ThedaCare clinic for evaluation. To rule out appendicitis, the physician sent appellant for pelvic x-rays, which came back normal. Appellant's physician, Dr. Adler-Fischer, kept her off of work for two weeks, but did not provide a diagnosis. Appellant then was seen by Dr. Laura Braun, a chiropractor, who provided treatment, physical therapy and work restrictions. Dr. Braun released appellant from care because the treatment was not yielding results. Appellant was then referred to a series of physicians, who alternately diagnosed fibromyalgia, rheumatoid arthritis and structural problems, including inflamed SI joint, mild degenerative disc disease and displaced discs from L3 to L5.

On May 20, 2005 Dr. John Ganser, an osteopathic physician specializing in family practice, stated that appellant had a one to two-year history of chronic back pain. He noted that she had a negative rheumatology work up and a magnetic resonance imaging (MRI) scan showed some degenerative changes in the lower lumbar spine. On physical examination, Dr. Ganser found tenderness in the lumbar region and SI joints bilaterally. A November 22, 2005 x-ray report showed no abnormalities with appellant's pelvic bones or soft tissues. On December 5, 2005 Dr. Ganser stated that appellant was feeling worse at work because lifting and driving were aggravating her back. He referred her to both a psychiatrist and a physiatrist.

On May 16, 2006 the Office notified appellant that the materials she had submitted were insufficient to establish her claim because they provided no diagnosis and no statement of causal relationship.

On May 23, 2006 appellant submitted additional medical reports. On June 7, 2004 Dr. Larry Hartley, a Board-certified family practitioner in Ventura, California, stated that appellant had a five-year history of slight low back pain and, over the previous two months, had experienced some tightness and popping in her back when she moved. On June 1, 2004 appellant had an acute onset of severe low back pain while at work. She was seen at an emergency room where she was diagnosed with lumbar strain and removed from work for two days. Dr. Hartley stated that appellant's back pain was due to lifting and carrying mail. On physical examination, he noted tenderness in the right paravertebral muscles in her lower back

but found that she had full range of motion. Dr. Hartley diagnosed resolving lumbosacral strain. He stated that appellant should be on light duty for one week and that she should report her employment injury. Dr. Hartley noted that appellant was reluctant to file a workers' compensation claim because of perceived difficulties with an impending job change. A September 14, 2004 x-ray revealed that appellant's lumbar spine had normal alignment and vertebral body height with no evidence of compression fracture or abnormal bone density. Her left SI joint was less defined than the right, which suggested early inflammation.

In a November 22, 2004 report, Dr. Brian Harrison, an occupational physician at the ThedaCare clinic, reported that appellant had back pain extending into her upper back and legs and intermittent numbness in her toes. Appellant stated that two days previously she bent over at work and could not straighten up. She reported that her back had been bothering her since August 2004. Appellant stated that she had attempted physical therapy, but stopped because it was painful. She selected mounted delivery routes to avoid lifting and because her back was easily jarred on walking routes. Appellant stated that she could perform two to four hours of mail casing, but that twisting and prolonged standing caused pain in her back. She was better able to handle twisting from a seated position. Dr. Harrison noted that appellant had lost 15 pounds since August 2004 and had symptoms including loss of appetite, nausea, lower pelvic cramping pain, intermittent lower abdominal pain and polyuria, particularly in the past week. Appellant's primary care physician, Dr. Adler-Fischer performed diagnostic testing which was reported as normal. On physical examination, Dr. Harrison found exquisite right lower quadrant tenderness without guarding, with tenderness on percussion. There was tenderness over each SI joint region and pain could be provoked in the right SI joint by the FABER test. Dr. Harrison also found a negative passive straight leg raising test, normal lumbar lordosis, no scoliosis, no spinal tenderness and normal lower extremity strength. He opined that appellant's lower back pain was secondary to an abdominal or pelvic process rather than a mechanical or spinal problem.

On December 7, 2004 Dr. Ndudi Oparaeche, a rheumatologist, noted that appellant had pain in her low back, pelvic area, right ischial bursa and posterior thigh. He reported that she had no relief with injections into the SI joints and that an MRI scan of the SI joints was negative for bone marrow edema or erosions. Dr. Oparaeche stated that the pain on appellant's left side had largely disappeared, but the pain on her right side had grown more pronounced. He opined that spondyloarthropathy was unlikely to be the cause of appellant's pain, because of her lack of response to the corticosteroids and the migratory nature of her pain. Dr. Oparaeche referred appellant to a pain clinic for evaluation.

On February 4, 2005 appellant began seeing chiropractor Dr. Braun for her lower back and thoracic spine pain. Dr. Braun provided a history of back pain beginning six months previously with insidious onset. She noted that the back pain was exacerbated with forward bending and lifting and that the scapular pain was worsened with standing or sitting straight. Dr. Braun reported that appellant's previous physicians had diagnosed mild degenerative joint disease. On physical examination she found that appellant had paraspinal muscle spasms at C1-7, T1-10 and L4-S1, slightly limited cervical ranges of motion, limited lumbar flexion and extension and tight trapezius muscles. Dr. Braun diagnosed lumbosacral sprain/strain with associated SI joint dysfunction and muscle tension headaches due to cervical segmental dysfunction. On March 10, 2005 she reviewed x-rays of appellant's lumbar spine and SI joints.

Dr. Braun diagnosed mild degenerative disc disease at L5-S1, confirmed by MRI scan and possible minor ligamentous laxity at the right SI joint.

On May 12, 2006 Dr. Patricia Cantagallo, a Board-certified internist, conducted a review of medical records. She noted that the November 2004 MRI scan and lab results ordered by Dr. Harrison at ThedaCare were negative for low-grade appendicitis. Dr. Cantagallo stated that her review of appellant's medical treatment from August 2004 to February 2005 made no specific mention of a traumatic injury in June or July 2004. Therefore, she changed her diagnosis to chronic low back pain without any documented injury.

On June 6, 2006 Dr. Ganser reported that appellant had a significant injury to her back while lifting and carrying mail in June 2004. At the time, she was working in California and had bent over to reach for an object in the back of her delivery truck. Appellant was treated in the emergency room. After moving to Wisconsin, she had an extensive work up, which determined that her back pain was not related to a rheumatologic disorder. Injections into appellant's left SI joint, chiropractic therapy and osteopathic therapy all gave her limited relief. Dr. Ganser stated that appellant's primary pain originated from her left SI region and she developed a myofascial pain problem in this region that sometimes affected her lower back and thoracic spine. Appellant also developed sleep disturbance and depression due to her chronic pain. Dr. Ganser opined that appellant's employment as a letter carrier, as well as the heavy lifting her duties entailed, aggravated her chronic low back pain. The pain initially developed as a result of her mail carrying duties in June 2004. Dr. Ganser stated that appellant had decreased pain when she was on limited duty and did not lift heavy items.

In an undated letter, received on June 20, 2006, Steven Sundstrom, appellant's supervisor, stated that she did not file her claim until the employing establishment required her to undergo a fitness-for-duty examination to remain on light duty. Appellant did not inform the employing establishment of her 2004 injury when she transferred from California and withheld information about the cause or degree of her condition.

By decision dated August 2, 2006, the Office denied appellant's claim on the grounds that she had not established a causal relationship between her employment duties and her back condition. The Office noted that back pain was not an acceptable diagnosis under the Federal Employees' Compensation Act.

On November 14, 2006 appellant requested reconsideration. She stated that the dates on her medical reports were more accurate than her memory and should be accepted as such. Appellant contended that her job duties aggravated her condition.

By decision dated January 10, 2007, the Office denied reconsideration of its August 2, 2006 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Act[1] 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

[1] 5 U.S C §§ 8101-8193.

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 or specific condition for which compensation is claimed is causally related to the employment injury.[2]

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;[3] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[4] and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[5]

When determining whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors, the Office generally relies on the rationalized opinion of a physician.[6] To be rationalized, the opinion must be based on a complete factual and medical background of the claimant[7] and must be one of reasonable medical certainty,[8] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

ANALYSIS -- ISSUE 1

The Office accepted heavy lifting, bending, carrying a satchel, driving, standing, sorting and walking as factors of appellant's employment. The issue to be resolved is whether she has established an occupational disease related to these factors. The issue of causation is medical and must be resolved by rationalized medical evidence.

On June 7, 2004 Dr. Hartley, a Board-certified family practitioner, diagnosed a resolving lumbosacral strain arising out of an employment incident. He stated that appellant's back pain was due to lifting and carrying mail. The Board finds that Dr. Hartley's report, which addresses appellant's alleged June 1, 2004 traumatic injury, is not relevant to the issue of whether her duties at the employing establishment aggravated her back or leg conditions because it predates the employment factors accepted by the Office.

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[2] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Solomon Polen*, 51 ECAB 341 (2000).

[4] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[5] *Ernest St. Pierre*, 51 ECAB 623 (2000).

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

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

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

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

On November 22, 2004 Dr. Harrison evaluated appellant for back pain extending into her upper back and legs. Appellant indicated that walking routes, twisting and prolonged standing aggravated her back. Dr. Harrison noted that appellant had significant weight loss and particularly in the past week, symptoms of loss of appetite, nausea, lower pelvic cramping pain, intermittent lower abdominal pain and polyuria. On physical examination, he found right lower quadrant tenderness without guarding and with tenderness on percussion. Though there was tenderness over each SI joint region and a positive FABER test on the right, all lower back tests and ranges of motions were normal. Dr. Harrison opined that appellant's lower back pain was secondary to an abdominal or pelvic process rather than a mechanical or spinal problem. The record establishes that the MRI scan and laboratory testing later ruled out this potential diagnosis. Therefore, the Board finds that Dr. Harrison's report is of limited probative value because he did not provide a firm diagnosis and did not address the issue of causal relationship.

On December 7, 2004 Dr. Oparaeche, a rheumatologist, noted that appellant had pain in her low back, pelvis, right ischial bursa and posterior thigh. He reported that an MRI scan of the SI joints was negative for bone marrow edema or erosions. Dr. Oparaeche opined that spondyloarthropathy was unlikely to be the cause of appellant's pain, because of her lack of response to the corticosteroid injections and the migratory nature of her pain, which had moved away from the left SI joint and intensified in the right. Because he provided no diagnosis for appellant's condition, the Board finds that his report is of severely diminished probative value.

On February 4, 2005 Dr. Braun, a chiropractor, reported her findings on physical examination of appellant. She diagnosed lumbosacral sprain/strain with associated SI joint dysfunction and muscle tension headaches due to cervical segmental dysfunction. On March 10, 2005 Dr. Braun reviewed x-rays of appellant's lumbar spine and SI joints. She diagnosed mild degenerative disc disease at L5-S1, confirmed by MRI scan and possible minor ligamentous laxity at the right SI joint. The Board notes that, under the Act, a chiropractor is competent to give medical evidence only to the extent that her reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist.[10] As Dr. Braun did not diagnose or treat appellant for spinal subluxation, her medical opinion is of no probative value on the issue of causal relationship.

On May 20, 2005 Dr. Ganser, an osteopathic physician specializing in family practice, stated that appellant had a history of chronic back pain and an MRI scan showing some degenerative changes in her lower lumbar spine. He noted that a November 22, 2004 x-ray report showed no abnormalities with appellant's pelvic bones or soft tissues. On examination, Dr. Ganser found bilateral tenderness in the lumbar region and SI joints. Although he diagnosed chronic back pain, he did not address the issue of causal relationship. On December 5, 2005 Dr. Ganser stated that lifting and driving duties at work were aggravating appellant's back. In a report dated June 6, 2006, he provided a detailed history of appellant's 2004 traumatic injury and her subsequent course of treatment. Dr. Ganser reported that injections into appellant's left SI joint, chiropractic therapy and osteopathic therapy gave only limited relief. He stated that appellant's primary pain originated from her left SI region and due to this pain, she developed a myofascial pain problem that sometimes affected her lower back and thoracic spine. Dr. Ganser

[10] 5 U.S.C. § 8101(2).

opined that appellant's employment as a letter carrier, as well as the heavy lifting her duties entailed, aggravated her chronic low back pain. The Board has held that a diagnosis of "pain," without more in the way of rationale, does not constitute the basis for the payment of compensation under the Act.[11] Dr. Ganser did not provide any diagnosis other than "chronic pain." The Board finds that his reports lack a firm diagnosis and are not adequate to establish the issue of causal relationship.

The Board finds that the medical evidence of record is insufficient for appellant to meet her burden of proof to establish a causal relationship between the accepted employment factors and her back condition.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act, the Office has the discretion to reopen a case for review on the merits.[12] Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that: (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.[13] Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[14]

ANALYSIS -- ISSUE 2

On November 14, 2006 appellant requested reconsideration. In an accompanying letter, she stated that, though she did not know the cause of her pain, she knew that her employment duties aggravated it. The Board has previously held that, although work activities may produce pain or discomfort revelatory of an underlying condition, this does not raise an inference of causal relationship.[15] Additionally, neither the mere fact that a condition manifests itself during a period of employment nor the belief that the condition was caused or aggravated by employment factors is sufficient to establish causal relationship.[16] Appellant has not presented any relevant and pertinent new evidence related to the issues in her case. She is not entitled to further review of the merits of her case under the last criteria of section 10.606(b)(2).[17]

[11] *Robert Broome*, 55 ECAB 339 (2004).

[12] 5 U.S.C. § 8128(a).

[13] 20 C.F.R. § 10.606(b)(2).

[14] *Id*. at § 10.608(b).

[15] *Gary M. DeLeo*, 56 ECAB 656 (2005).

[16] *Paul Foster*, 56 ECAB 208 (2004).

[17] 20 C.F.R. § 10.606(b)(2)(iii).

Appellant did not raise new arguments or present new evidence that the Office erroneously applied or interpreted a specific point of law or advance any relevant legal arguments not previously considered by the Office. Therefore, the Board finds that she is not entitled to further review of the merits of her case under the first two criteria of section 10.606(b)(2).[18]

As appellant did not meet any of the regulatory requirements for review of the merits of her claim, the Office properly denied her November 14, 2006 request for reconsideration.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury causally related to factors of her federal employment. The Board further finds that the Office properly denied her request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 10, 2007 and August 2, 2006 are affirmed.

Issued: April 11, 2008
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

[18] *Id.* at § 10.606(b)(2)(i)-(ii).