

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

P.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 08-42
Issued: April 21, 2008**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On October 3, 2007 appellant filed a timely appeal from the October 20, 2006 and June 15, 2007 merit decisions of the Office of Workers' Compensation Programs denying her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a back injury while in the performance of duty on August 30, 2005.

FACTUAL HISTORY

On April 17, 2006 appellant, a 48-year-old mail processor, filed a traumatic injury claim alleging that, on August 30, 2005 at 4:50 a.m., she felt severe pain in her lower back when she bent down to pick up some mail that had fallen to the floor. She stopped work on August 31, 2005.

The record contains a September 9, 2005 notice of recurrence (Form CA-2a), filed under claim No. 03-0233592.¹ Appellant alleged that, on August 31, 2005, she experienced a recurrence of disability due to a March 10, 1998 work-related injury, which resulted in a herniated disc. She stated that, while she was sitting repairing torn mail, she felt sharp, stabbing pains across her back and radiating down her buttocks and into her thighs. Appellant indicated that she had suffered chronic pain since her original injury.

Appellant submitted a September 2, 2005 duty status report from Dr. Bruce Williams, a Board-certified osteopath, specializing in the area of family practice. Dr. Williams diagnosed herniated disc at L5-S1 and identified the date of injury as March 10, 1998. In a September 23, 2005 attending physician's report, he reiterated his previous diagnosis, but stated that the date of injury was August 30, 2005. Dr. Williams provided a history of continuing lower back pain. In a narrative report dated October 11, 2005, he stated that appellant was no longer able to work due to the chronic nature of her herniated lumbar disc, noting that she had been out of work since August 31, 2005. Referencing a September 16, 2005 x-ray report, Dr. Williams diagnosed minimal osteoarthritis at L5-S1, and repetitive strain of the lumbar spine, secondary to job duties. He stated that appellant's condition remained aggravated.

A magnetic resonance imaging (MRI) scan report dated December 28, 2005 provided an impression of central and slightly left paracentral disc extrusion at L5-S1. A September 16, 2005 x-ray report reflected minimal osteoarthritis at L5-S1. The record contains unsigned chart notes for the period March 13, 1998 through September 1, 2000.

Appellant submitted a September 20, 2005 report from Dr. R. Bruce Heppenstall, a Board-certified orthopedic surgeon, who stated that appellant complained of having low back pain since August 30, 2005. Dr. Heppenstall noted that the September 16, 2005 x-ray showed minimal osteoarthritis at L5-S1. His examination revealed minimal tenderness to direct palpation over the lower lumbar area. Dr. Heppenstall found 80 degrees of flexion and full extension. Lateral bending was not painful. The sitting root test was negative bilaterally, and there was no evidence of any nerve root tension signs. Reflexes and sensation were intact to both lower extremities. The extension hallucis longus was equal and normal bilaterally.

Appellant submitted notes from Dr. Williams for the period January 29, 2003 through December 20, 2005. Notes dated September 2, 2005 reflected appellant's complaints of pain with radiculopathy in both buttocks. Appellant expressed her belief that her work duties had exacerbated her lower back pain. On December 20, 2005 Dr. Williams stated that appellant continued to suffer from a May 17, 1999 work-related injury, which resulted in a herniated disc between L5-S1, causing subsequent L5-S1 retrolisthesis with bilateral foraminal stenosis. He indicated that appellant's condition had become chronic since the May 17, 1999 injury, and that

¹ The record reflects that, on March 10, 1998, appellant filed a traumatic injury claim (No. 030233592) alleging that she injured her lower back while lifting mail. The claim was not formally adjudicated with a merit decision at that time. On September 9, 2005 appellant filed a Form CA-2a in claim No. 030233592, alleging that she suffered a recurrence of disability on August 31, 2005 while sitting in a chair repairing torn mail. By decision dated March 6, 2006, the Office denied appellant's 1998 traumatic injury claim and her September 9, 2005 claim for recurrence. Appellant also filed a May 17, 1999 traumatic injury claim that was accepted for lumbar strain, claim No. 030243280.

she had experienced exacerbations of her preexisting condition, the most recent being August 30, 2005.

On March 24, 2006 Dr. Williams indicated that appellant had been out of work since August 30, 2005 as a result of her March 10, 1998 accident. He noted that this was the most recent flare-up of her chronic condition. In a report dated June 1, 2006, Dr. Williams stated that appellant's current condition was a direct result of her March 10, 1998 work-related accident. He indicated that her lumbar herniated disc on lateral L5 was displacing the left S1 nerve root, causing significant low back pain and sciatica of the left buttock and left posterior thigh, down the leg and into the left foot. Dr. Williams stated that, on August 30, 2005, appellant was "made" to "lift, bend and stand until she finally was broken. Her body simply could not do it any longer." On June 20, 2006 he reiterated his diagnosis of central and slightly left paracentral disc extrusion at L5-S1. Dr. Williams stated that appellant had "been out due to a traumatic injury since August 30, 2005 as a result of the March 10, 1998 accident, which is work related. This is her most recent flare-up from the aforementioned chronic condition."

In a narrative report dated August 22, 2006, Dr. Heppenstall stated that he first examined appellant on June 4, 2002 following a 1998 work accident. He next saw her on September 20, 2005, when she complained of low back pain beginning August 30, 2005. Dr. Heppenstall noted that September 16, 2005 x-rays revealed mild osteoarthritis at L5-S1, a December 28, 2005 MRI scan showed central and to the left paracentral disc extrusion at the L5-S1 interval, which abutted but did not displace the left S1 nerve root.

By decision dated October 20, 2006, the Office denied appellant's claim, finding that the medical evidence did not contain a diagnosis that could be connected to the claimed event. On October 25, 2006 appellant, through her representative, requested an oral hearing.

In a September 27, 2006 addendum to his letter of August 22, 2006, Dr. Heppenstall stated that appellant had sustained an injury in 1998 when she experienced low back pain and left sciatica. Appellant continued to have symptoms until August 30, 2005, when she sustained another injury to her back and lower extremities. Dr. Heppenstall compared a September 13, 2004 MRI scan to a December 28, 2005 MRI scan, which showed that appellant's herniated disc on the left had increased in size. He opined that both injuries were work related and were the direct cause of appellant's herniated L5 disc on the left.

At the February 22, 2007 hearing, appellant testified that she injured her back on March 10, 1998 while bending and lifting a tray of mail at work. On May 17, 1999 she reinjured her back while pushing a container of mail. Appellant's pain never disappeared, but rather increased over time. She stated that on August 30, 2005 she experienced pain in her lower back when she picked up mail that had fallen on the floor. Appellant stated that the following day she reported the incident to her supervisor, Pat Kowalski, who advised her to file a recurrence claim.

In a May 2, 2007 addendum to his August 22, 2006 letter, Dr. Heppenstall stated that appellant reinjured her back on August 30, 2005, when she bent over to pick up mail from the floor. At that time, "she felt exquisite pain in her low back and down her left leg in the form of sciatica. This aggravated the symptoms in [appellant's] back and her left lower extremity."

Dr. Heppenstall reiterated that the 1998 and 2005 injuries were work related, and were the direct cause of appellant's herniated L5 disc on the left.

By decision dated June 15, 2007, an Office hearing representative affirmed the Office's October 20, 2007 decision. Although he accepted that the work event occurred as alleged, the representative found that the medical evidence was insufficient to establish that appellant's medical condition resulted from the established work incident.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.³

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of 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 or specific condition for which compensation is claimed is causally related to the employment injury.⁴ When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.⁵

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident, or to specific conditions of employment.⁶ An award of compensation may not be based on appellant's belief of causal relationship.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that

² 5 U.S.C. § 8102(a).

³ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

⁴ *Robert Broome*, 55 ECAB 339 (2004).

⁵ *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q)(ee).

⁶ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁸ Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.⁹

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.¹⁰

ANALYSIS

The Office accepted that appellant was a federal employee, she timely filed her claim for compensation benefits, and the August 30, 2005 workplace incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

Medical evidence submitted by appellant consists of reports and notes from Dr. Williams and Dr. Heppenstall; reports of MRI scans and x-ray reports. None of these reports constitutes probative medical evidence.

Dr. Williams' reports are insufficient to establish appellant's claim. His notes for the period January 29, 2003 through December 20, 2005 do not contain an opinion as to the cause of appellant's condition. The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ In a September 2, 2005 duty status report, Dr. Williams diagnosed a herniated disc at L5-S1, but identified the date of injury as March 10, 1998. As the report was not consistent with the history of injury provided by appellant, and did not include an opinion on the cause of her diagnosed condition, it is of diminished probative value. In his September 23, 2005 attending physician's report, Dr. Williams reiterated his previous diagnosis and stated that appellant had sustained an injury on August 30, 2005; however, he did not provide a complete history of injury or a definitive opinion as to the cause of her condition.

⁸ *Id.*

⁹ 20 C.F.R. § 10.303(a).

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003).

¹¹ *See A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006).

On October 11, 2005 Dr. Williams stated that appellant was no longer able to work due to the chronic nature of her herniated lumbar disc, noting that she had been out of work since August 31, 2005. Referencing a September 16, 2005 x-ray report, he diagnosed minimal osteoarthritis at L5-S1, and repetitive strain of the lumbar spine, secondary to job duties, and stated that appellant's condition remained aggravated. Dr. Williams did not opine that a specific traumatic event caused or aggravated appellant's diagnosed condition. Rather, he indicated that her condition was due to repetitive job activities, which, by definition, does not constitute a traumatic injury.¹² Therefore, his report is both inconsistent with the history of injury related by appellant and unsupported by medical rationale.

On December 20, 2005 Dr. Williams stated that appellant continued to suffer from a May 17, 1999 work-related injury, which resulted in a herniated disc between L5-S1, causing subsequent L5-S1 retrolisthesis with bilateral foraminal stenosis. He indicated that appellant's condition had become chronic, and that she had experienced exacerbations of her preexisting condition, the most recent being August 30, 2005. However, Dr. Williams did not sufficiently describe the job duties appellant was engaged in on August 30, 2005; nor did he explain the medical process through which such duties would have been competent to cause the claimed condition. Medical conclusions unsupported by rationale are of little probative value.¹³

In reports dated March 24, June 1 and 20, 2006, Dr. Williams stated that on August 30, 2005 appellant had experienced a flare-up of her chronic condition that resulted from her March 10, 1998 work-related accident. On June 1, 2006 he indicated that her lumbar herniated disc on lateral L5 was displacing the left S1 nerve root, causing significant low back pain and sciatica of the left buttock and left posterior thigh, down the leg and into the left foot. Dr. Williams stated that on August 30, 2005 appellant was "made" to "lift, bend and stand until she finally was broken. Her body simply could not do it any longer." On June 20, 2006 he reiterated his diagnosis of central and slightly left paracentral disc extrusion at L5-S1, and stated that appellant had "been out due to a traumatic injury since August 30, 2005 as a result of the March 10, 1998 accident, which is work related." None of the aforementioned reports provided an accurate history of injury, consistent with the history provided by appellant.¹⁴ Moreover, Dr. Williams did not explain the physiological process whereby appellant's diagnosed condition resulted from the alleged August 30, 2005 employment incident. Therefore, these reports are of diminished probative value.

Dr. Heppenstall's reports are also insufficient to establish appellant's claim. On September 20, 2005 he noted that appellant complained of having low back pain since August 30, 2005. Dr. Heppenstall noted that the September 16, 2005 x-ray showed minimal osteoarthritis at L5-S1. His examination revealed minimal tenderness to direct palpation over the

¹² See 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q) and (ee) (2002) ("Occupational disease or Illness" and "Traumatic injury" defined).

¹³ *Willa M. Frazier*, 55 ECAB 379 (2004).

¹⁴ The Board notes that appellant reported inconsistent versions of the alleged injury. In her September 9, 2005 CA-2a, filed under claim No. 03-0233592, she alleged that she suffered a recurrence of disability on August 31, 2005 while sitting in a chair repairing torn mail. In her CA-1 filed in this case, appellant alleged that she felt severe pain in her lower back when she bent down to pick up some mail that had fallen to the floor.

lower lumbar area. Dr. Heppenstall found 80 degrees of flexion and full extension. Lateral bending was not painful. The sitting root test was negative bilaterally, and there was no evidence of any nerve root tension signs. Reflexes and sensation were intact to both lower extremities. The extension hallucis longus was equal and normal bilaterally. As the report did not contain an opinion as to the cause of appellant's condition, it is of diminished probative value. On August 22, 2006 Dr. Heppenstall stated that he first examined appellant on June 4, 2002, following a 1998 work accident. He next saw her on September 20, 2005, when she complained of low back pain beginning August 30, 2005. Dr. Heppenstall noted that September 16, 2005 x-rays revealed mild osteoarthritis at L5-S1, a December 28, 2005 MRI scan showed central and to the left paracentral disc extrusion at the L5-S1 interval, which abutted but did not displace the left S1 nerve root. As this report does not contain an opinion on the cause of appellant's condition, it is of limited probative value.

On September 27, 2006 Dr. Heppenstall stated that appellant had sustained an injury in 1998 when she experienced low back pain and left sciatica, and that she continued to have symptoms until August 30, 2005, when she sustained another injury to her back and lower extremities. He compared a September 13, 2004 MRI scan to a December 28, 2005 MRI scan, which showed that her herniated disc on the left had increased in size. Dr. Heppenstall opined that both injuries were work related and were the direct cause of appellant's herniated L5 disc on the left. The Board finds that Dr. Heppenstall's opinion is not sufficiently rationalized to establish a causal relationship between the August 30, 2005 employment incident and appellant's diagnosed condition. His opinion was not based on a complete factual and medical background, and was not supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident.¹⁵ Dr. Heppenstall supported his opinion by comparing a September 13, 2004 MRI scan to a December 28, 2005 MRI scan, which showed that appellant's herniated disc on the left had increased in size. However, the mere fact that appellant's condition changed between the respective dates of the MRI scans is insufficient to establish a causal relationship.¹⁶ Dr. Heppenstall did not describe the August 30, 2005 incident or explain the medical process through which the incident would have caused appellant's condition.

On May 2, 2007 Dr. Heppenstall stated that appellant reinjured her back on August 30, 2005, when she bent over to pick up mail from the floor. At that time, "she felt exquisite pain in her low back and down her left leg in the form of sciatica. This aggravated the symptoms in her back and her left lower extremity." Dr. Heppenstall reiterated that the 1998 and 2005 injuries were work related, and were the direct cause of appellant's herniated L5 disc on the left. Once again, this report is of diminished probative value, as it fails to adequately describe how the act of bending over to pick up mail on August 30, 2005 caused or aggravated appellant's diagnosed condition. Dr. Heppenstall's categorical statement, without explanation, is insufficient to establish causal relationship.

Appellant has not provided a narrative report containing a physician's rationalized opinion establishing a causal relationship between her condition and the established August 30,

¹⁵ *John W. Montoya, supra* note 10.

¹⁶ *Id.*

2005 work incident. The remaining medical evidence of record, including x-ray reports and MRI scan reports, lacks any opinion on causal relationship and is, therefore, of limited probative value.¹⁷

Appellant expressed her belief that her back condition resulted from the August 30, 2005 employment incident. 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.¹⁸ 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.¹⁹ Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the work-related incident is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment, and the doctor's opinion, with medical reasons, explaining how her diagnosed condition was related to the August 30, 2005 employment incident. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence explaining how appellant's claimed back condition was caused or aggravated by her employment, she has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on August 30, 2005.

¹⁷ *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁸ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2007 and October 20, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 21, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board