United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	
DEPARTMENT OF HEALTH & HUMAN SERVICES, CENTERS FOR MEDICARE & MEDICAID SERVICES, Woodlawn, MD, Employer	)	**Docket No. 08-1580** **Issued: December 24, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 12, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 25, 2008 merit decision denying her 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 established that she sustained an injury in the performance of duty on September 21, 2006, as alleged.

FACTUAL HISTORY

On November 2, 2006 appellant, then a 37-year-old information technology specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 21, 2006 she injured her back while moving heavy books from her desk to her file cabinet. She did not notice any pain until she woke up the next morning.

On October 5, 2006 appellant sought medical treatment from Dr. Pankaj Desai, a Board-certified internist, who reported that appellant presented with sharp and intense lower back pain, radiating slightly into her right thigh, beginning approximately 10 days prior. Physical examination showed a mild paraspinal muscle spasm, tenderness over the sciatic notch and pain in the paraspinous muscles of the lumbar spine. Dr. Desai diagnosed back pain and sciatica. He returned appellant to light-duty work on October 9, 2006, recommending two to three hours per day for the following two weeks.

Dr. Desai referred appellant to physical therapy, where she was treated for leg and back pain. Appellant submitted physical therapy notes dated October 10 through November 21, 2006, reflecting her history that she injured herself while lifting heavy books at work. Dr. Desai again examined appellant on November 27, 2006. He advised that appellant had a history of lower back pain related to moving heavy boxes at work. Dr. Desai restricted appellant's bending, stooping, lifting, pushing, and pulling and recommended a magnetic resonance imaging (MRI) scan. An MRI scan dated December 13, 2006 showed displacement of the lumbar invertebral disc without myelopathy and Tarlov's cysts on her right side. On December 19, 2006 Dr. Desai diagnosed impingement of the nerve at the fourth lumbar vertebrae and bilateral canal stenosis.

In an attending physician's report dated December 19, 2006, Dr. Desai stated that appellant suffered a herniated lumbar disc. As to whether he believed the condition was caused or aggravated by employment activity, he checked the box marked "yes." Dr. Desai advised that appellant should take time off from work to rest and relieve her pain and not stand for longer than 30 minutes or sit continuously for longer than one hour.

On February 11, 2008 appellant filed a claim for compensation (Form CA-7) for the period October 1, 2006 through January 6, 2007.

In correspondence dated February 14, 2008, the Office informed appellant that the medical evidence was insufficient to establish her claim and provided 30 days for the submission of additional evidence.

Appellant subsequently submitted a personal narrative and a letter from Dr. Desai, each dated February 25, 2008. She described the alleged employment incident, explained that she attempted to self-treat her back pain for two weeks prior to seeking medical treatment and indicated that she did not have any symptoms prior to the her injury. Dr. Desai stated that appellant sustained an injury to her back around September 21, 2006 while lifting and moving heavy books and computer equipment. He summarized her treatment and MRI scan results, stating that, in his opinion, her back pain was caused by lifting heavy books and computer equipment while organizing her cubical.

In a decision dated March 25, 2008, the Office denied appellant's traumatic injury claim. It accepted that on September 21, 2006 she moved books at work; however, it found that she did not submit sufficient medical evidence to establish an injury related to this employment incident.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,[2] including that she is an "employee" within the meaning of the Act[3] and that she filed her claim within the applicable time limitation.[4] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

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 which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment incident. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.[8]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[3] *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[4] *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

[5] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[7] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[8] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The Office accepted that on September 21, 2006 appellant was lifting heavy books at work, as alleged. The issue, therefore, is whether she submitted sufficient medical evidence to establish that her claimed back injury was caused by the employment incident.

The Board finds the medical evidence insufficient to establish that appellant sustained injury on September 21, 2006. Appellant submitted a statement attributing her injury to lifting heavy books at work. However, her statement is insufficient to establish causation. The fact that appellant believes her condition was caused by employment is not sufficient to meet the causation burden of proof.[9] Meeting this burden of proof requires a physician's opinion explaining the nature of the relationship between the diagnosed condition and the accepted employment incident.[10]

Appellant submitted medical reports from Dr. Desai, a Board-certified internist. On November 27, 2006 Dr. Desai noted appellant's history that she was injured while moving heavy boxes at work. Based on MRI scan results, on December 19, 2006 he diagnosed nerve impingement and bilateral canal stenosis. In a February 28, 2008 letter, Dr. Desai attributed appellant's back injury to the lifting of heavy books at work on September 21, 2006. While he related appellant's injury to her accepted employment incident, this is not enough to meet appellant's burden of proof. A physician's opinion on the causal relationship between a claimant's injury and an employment incident is not dispositive simply because it is rendered by a physician. To be of probative value, Dr. Desai must provide rationale for his opinion on causal relation.[11] He did not explain how appellant's diagnosed nerve impingement and stenosis were caused or contributed to by her moving heavy books at work. As noted, the incident at work occurred on September 21, 2006. On examination some two weeks later, Dr. Desai noted mild muscle spasms of the lumbar spine and returned appellant to duty on October 9, 2006. An MRI scan of December 13, 2006 revealed a displaced lumbar disc and the physician subsequently diagnosed spinal stenosis with impingement. Dr. Desai related the herniated disc to the incident at work by checking a box marked "yes" on a form. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without supporting medical rationale, that opinion has little probative value and is insufficient to establish a causal relationship.[12] Dr. Desai did not submit a medical narrative report explaining how the accepted incident caused or aggravated her back conditions. He did not provide a full history of any preexisting condition or address how the MRI scan findings related to the lifting

[9] *See Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[10] *See Robert Broome*, 55 ECAB 339 (2004); *Linda I. Sprague*, 28 ECAB 386 (1997).

[11] *See Jean Culliton*, 47 ECAB 728 (1996); *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

[12] *See Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

incident some three months prior.[13] For these reasons, the Board finds that the opinion of Dr. Desai is of reduced probative value.

Appellant also submitted several physical therapy reports pertaining to her treatment. A physical therapist is not a "physician" as defined under 5 U.S.C. § 8101(2). Therefore these reports are of no probative value.[14]

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on September 21, 2006, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 25, 2008 is affirmed.[15]

Issued: December 24, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[13] *See Linda L. Mendenhall*, 41 ECAB 532 (1990) (the Board has held that when diagnostic testing is delayed uncertainty arises regarding the cause of the diagnosed condition and may reduce the probative value of a medical opinion if not explained).

[14] A "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101.2. *See Thomas R. Horsfall*, 48 ECAB 180 (1996); *Jerre R. Rinehart*, 45 ECAB 518 (1994).

[15] The Board notes following the issue of the Office's March 25, 2008 decision appellant submitted additional evidence. Pursuant to 20 C.F.R. § 501.2(c), the Board is precluded from reviewing evidence for the first time on appeal. However, appellant may submit evidence to the Office with a formal, written request for reconsideration under 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.