United States Department of Labor
Employees' Compensation Appeals Board

T.L., Appellant	)	
and	)	**Docket No. 08-1639**
	)	**Issued: December 10, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Paterson, NJ, Employer	)	

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 20, 2008 appellant filed a timely appeal from the April 15, 2008 merit decision 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 February 29, 2008.

FACTUAL HISTORY

On March 4, 2008 appellant, a 41-year-old letter carrier, filed a traumatic injury claim alleging that, on February 29, 2008, she sustained injuries to her lower and middle back in the performance of duty, when her employment vehicle was struck by another vehicle that failed to stop at a stop sign. She did not return to work following the incident.

Appellant submitted a report dated March 1, 2008, bearing an illegible signature, from Clifton Health Center. The report reflected a diagnosis of severe lower back sprain with radiculopathy and recommended work restrictions, which prohibited lifting.

In a letter dated March 14, 2008, the Office informed appellant that the information submitted was insufficient to establish her claim. It advised her to submit additional information, including an accident report and a physician's report explaining how her diagnosed back sprain was causally related to the February 29, 2008 incident.

Appellant submitted a March 12, 2008 duty status report from Dr. Nohamed Kawan, a treating physician, who diagnosed "severe back pain" and indicated that appellant was disabled until further notice. Dr. Kawan noted that the date of injury was February 29, 2008. In response to a question as to how the injury occurred, Dr. Kawan stated, "accident/lower back pain." In response to a question as to whether the diagnosed condition was due to the injury, he answered, "Yes."

In a letter dated March 12, 2008, the employing establishment controverted appellant's claim. Evona Dilks, customer service manager, stated that appellant did not appear to be injured immediately following the February 29, 2008 incident, when her supervisor appeared on the scene of the accident. She stated that appellant had insisted that she was not injured and that she did not require any medical treatment.

In a letter to the Office dated March 18, 2008, Ms. Dilks stated that appellant was driving a government-owned vehicle at the time of the accident on February 29, 2008. She also indicated that appellant was driving in the most direct route between the point of her last official duty and her next expected official duty.

In a March 26, 2008 duty status report, Dr. Kawan stated that appellant was still disabled until further notice. He again indicated that the date of injury was February 29, 2008 and answered the question regarding how the injury occurred and the parts of the body affected by stating, "accident/lower back pains."

The record contains a March 31, 2008 report of a magnetic resonance imaging (MRI) scan of the hips. The report reflects mild changes of osteoarthritis of the right and left hips; bilateral hip joint effusion; and trochanteric bursitis, right and left femurs.

By decision dated April 15, 2008, the Office denied appellant's claim. It accepted that the work event occurred as alleged, but found that the medical evidence was insufficient to establish a causal relationship between a diagnosed condition and the accepted incident.[1]

[1] The Board notes that appellant submitted additional evidence after the Office rendered its February 7, 2007 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Therefore, this new evidence cannot be considered by the Board on appeal. Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation 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.[2] 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.[3]

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.[4] An award of compensation may not be based on appellant's belief of causal relationship.[5] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[6] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[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 factors. 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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[2] *Robert Broome*, 55 ECAB 339 (2004).

[3] *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).

[4] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

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

[6] *Id.*

[7] 20 C.F.R. § 10.303(a).

[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 appellant was a federal employee; that she timely filed her claim for compensation benefits and that the February 29, 2008 work-related 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 a report dated March 1, 2008 from Clifton Health Center; duty status reports from Dr. Kawan dated March 12 and 26, 2008; and a March 31, 2008 report of an MRI scan of the hips. None of these reports constitutes probative medical evidence.

The March 1, 2008 report from Clifton Health Center reflected a diagnosis of severe lower back sprain with radiculopathy and recommended work restrictions. This report lacks probative value on several counts. First, as it bears an illegible signature, it is impossible for the Board to determine whether the person completing the report qualifies as a "physician" as defined by the Act.[9] Additionally, the report does not contain an opinion as to the cause of appellant's diagnosed condition. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[10]

In March 12 and 26, 2008 duty status reports, Dr. Kawan stated that appellant was disabled due to "severe back pain." Noting that the date of injury was February 29, 2008, he indicated his belief that appellant's condition was due to the injury by answering "yes" to a question regarding causal relationship. In response to a question as to how the injury occurred, Dr. Kawan stated, "accident/lower back pain." His reports fail to substantiate appellant's claim. First, they do not contain a specific diagnosis. The Board has held that pain is a symptom, rather than a condition and the mere diagnosis of pain does not constitute a basis for the payment of compensation.[11] Moreover, they do not explain how appellant's condition was caused by the accepted work incident. The Board has also found that a report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work event caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.[12] Dr. Kawan's one-word affirmative response to the Office's question is tantamount to a checkmark and is thus inadequate to establish appellant's claim. Additionally, he did not provide

[9] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[10] *Michael E. Smith*, 50 ECAB 313 (1999).

[11] *Robert Broome*, *supra* note 2.

[12] *See Calvin E. King, Jr*., 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr*., 41 ECAB 843 (1990).

findings on examination or indicate that his opinion was based on a review of a complete factual and medical background of appellant. For all of these reasons, Dr. Kawan's reports are of diminished probative value.

The March 31, 2008 report of an MRI scan of the hips reflected mild changes of osteoarthritis, bilateral hip joint effusion and trochanteric bursitis of the right and left femurs. As the report did not contain an opinion as to the cause of appellant's condition, it is of limited probative value and is insufficient to establish her claim.[13]

Appellant expressed her belief that her back condition resulted from the February 29, 2008 motor vehicle accident. 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.[14] 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.[15] 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, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how her 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 causally related to factors of her federal employment.

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 February 29, 2008.

[13] *Michael E. Smith*, *supra* note 10.

[14] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[15] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 10, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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