

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

L.M., Appellant)
and) Docket No. 08-1717
U.S. POSTAL SERVICE, BULK MAIL) Issued: December 19, 2008
CENTER, Kansas City, KS, Employer)
)

Appearances:
Melford V. McCormick, Esq., for the appellant
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 June 2, 2008 appellant, through counsel, filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated October 22, 2007 and May 21, 2008 finding that she did not sustain an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that she sustained a back injury while in the performance of duty on May 21, 2006, as alleged.

FACTUAL HISTORY

On June 21, 2006 appellant, then a 28-year-old mail handler, filed a traumatic injury claim alleging that on May 21, 2006 she hurt her back and right leg muscle as a result of lifting sacks of mail. A June 13, 2006 progress note of Dr. Karen A. Ryan, a Board-certified internist, reviewed a history that appellant experienced severe low back pain that radiated to her left buttock after she arrived home from work. Appellant also experienced abdominal pain which

she believed may have been caused by a large uterine fibroid. Dr. Ryan opined that appellant most likely sustained a low back strain. She expressed concern about her abdominal pain as some bleeding into the fibroid may have occurred.

Progress notes dated May 21 and 24, 2006 of Debra B. Clark, Matthew Sharpe and Morris Russell, registered nurses, addressed appellant's back and left thigh pain. Mr. Sharpe stated that she sustained a musculoskeletal strain.

In a June 22, 2006 letter, the employing establishment controverted the claim. It stated that on June 21, 2006 appellant reported her alleged May 21, 2006 back injury to Danny Burch, Carlos Hamilton and W.D. Smith, supervisors. The employing establishment contended that neither Mr. Smith nor Mr. Hamilton had any knowledge of the alleged injury. It stated that Mr. Smith was aware of appellant's medical restrictions, which were for other reasons. Mr. Hamilton was notified by appellant on May 20, 2006 that she was not feeling well and needed to go to a local emergency room. He stated that she did not indicate that it was related to her back or to her employment. It noted several disciplinary actions were taken against appellant regarding her attendance and inappropriate conduct since April 28, 2006. The employing establishment submitted e-mail messages from Mr. Burch and Mr. Hamilton to support that appellant did not sustain a work-related back injury.

By letter dated June 26, 2006, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the additional factual and medical evidence she needed to submit. The Office requested a rationalized medical report from appellant's attending physician, which described her symptoms, results of examination and tests, diagnosis, treatment provided, prognosis, period and extent of disability and an opinion explaining why the diagnosed condition was caused or aggravated by the claimed injury.

A June 28, 2006 disability certificate of Sherril Sego, a nurse practitioner, stated that appellant was excused from work during the period June 24 through July 4, 2006. She stated that appellant may return to work on July 5, 2006 without restrictions.

By decision dated July 31, 2006, the Office denied appellant's claim. It found the medical evidence insufficient to establish that her claimed back condition was causally related to the accepted May 21, 2006 employment incident.

In an October 25, 2006 letter, appellant, through her representative, requested reconsideration. In an October 24, 2006 progress note, Ms. Sego stated that appellant's job-related lifting requirements likely worsened her chronic low back pain. A September 18, 2006 magnetic resonance imaging (MRI) scan report of Dr. Mushtaq Ahmad, a Board-certified internist, stated that appellant sustained degenerative disc changes at L5-S1. She also had a large disc protrusion at L5-S1 that was lateralized to the right side, resulting in effacement and deformity of the ventral thecal sac and an impression on adjacent nerve roots.

By decision dated January 29, 2007, the Office denied modification of the July 31, 2006 decision. It found the evidence insufficient to establish that appellant sustained a back injury causally related to the accepted May 21, 2006 employment incident.

An April 11, 2007 x-ray report of Dr. Padma K. Kandula, a Board-certified radiologist, stated that appellant sustained mild narrowing of the L5-S1 disc with degenerative disc disease. A January 23, 2007 consultation sheet from the Department of Veterans Affairs (VA) advised that appellant had a 60 percent service-connected disability rating for a major depressive disorder and hypothyroidism. An April 10, 2007 report of Dr. Magdalene A. Akanji, a VA physician, noted that appellant experienced low back pain with a herniated nucleus pulposus.

Reports dated July 13, 2007 from Dr. Ann Y. Lee, a Board-certified physiatrist, stated that appellant suffered from low back pain and mild degenerative disc narrowing at L5-S1.

By letter dated September 5, 2007, appellant, through counsel, requested reconsideration of the July 31, 2006 decision.

In an October 22, 2007 decision, the Office denied modification of the January 29, 2007 decision. It found the medical evidence insufficient to establish a causal relationship between her back condition and the May 21, 2006 employment incident.

By letter dated January 30, 2008, appellant, through counsel, requested reconsideration. In a January 18, 2008 report, Dr. Lee reviewed a history of the accepted May 21, 2006 employment incident. On physical examination, she reported localized back pain with provocative maneuvers. Dr. Lee further reported no definite neurological deficits. She stated that this finding was consistent with a lumbar strain that was causally related to the May 21, 2006 employment incident. Dr. Lee was unable to determine whether appellant was currently capable of performing her work duties as she was unable to address her recovery or progress. She evaluated appellant several months ago and she did not keep her follow-up appointment. Dr. Lee related that, on July 13, 2007, she placed appellant on modified work duty with a 10-pound lifting restriction, which may be alleviated if her condition had improved.

By decision dated May 21, 2008, the Office denied modification of the October 22, 2007 decision. It found that appellant failed to submit rationalized medical evidence establishing that she sustained a back injury due to the May 21, 2006 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.⁴

The medical evidence required to establish a causal relationship 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. The opinion of the physician 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 specific employment factors identified by the claimant.⁵ Neither the fact that appellant's condition became apparent during a period of employment nor her belief that the condition was caused by her employment, is sufficient to establish a causal relationship.⁶

ANALYSIS

The Office accepted that appellant lifted a sack of mail on May 21, 2006 while working as a mail carrier at the employing establishment. The Board finds, however, that the medical evidence is insufficient to establish that her diagnosed back condition was caused or aggravated by the May 21, 2006 employment incident.

Dr. Ryan's June 13, 2006 progress note reviewed a history of severe low back pain that radiated to appellant's left buttock after she arrived home from work and noted abdominal pain, which the physician believed may have been caused by a large uterine fibroid. She opined that appellant "most likely" sustained a low back strain. Dr. Ryan failed to provide a firm diagnosis regarding appellant's back condition. Moreover, she did not provide an accurate history of the accepted May 21, 2006 employment incident; that appellant had lifted a sack of mail at work.

Dr. Ahmad's September 18, 2006 MRI scan report stated that appellant sustained degenerative disc changes at L5-S1. She had a large disc protrusion at L5-S1 that was lateralized to the right side, resulting in effacement and deformity of the ventral thecal sac and an

³ *Gary J. Watling*, 52 ECAB 357 (2001).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *Solomon Polen*, 51 ECAB 341 (2000).

⁶ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

impression on adjacent nerve roots. Dr. Kandula's April 11, 2007 x-ray report stated that appellant sustained mild narrowing of the L5-S1 disc with degenerative disc disease. Dr. Akanji's April 10, 2007 report noted low back pain with a herniated nucleus pulposus. Dr. Lee's July 13, 2007 reports stated that appellant suffered from lumbar pain and mild degenerative disc narrowing at L5-S1. This evidence, however, is insufficient to establish appellant's claim. None of the physicians addressed how the diagnosed conditions were caused or contributed to by the accepted employment incident.

The January 23, 2007 VA consultation sheet noted a 60 percent service-connected disability rating for appellant's major depressive disorder and hypothyroidism. This evidence is not relevant to her back injury claim as it did not address whether she sustained a back injury due to the May 21, 2006 employment incident.

Dr. Lee's January 18, 2008 report reviewed a history of the May 21, 2006 employment incident. She opined that appellant sustained a lumbar strain causally related to the employment incident based on localized back pain with provocative maneuvers and no definite neurological deficits. Dr. Lee was unable to determine whether appellant could perform her work duties and was unable to address her recovery or progress because the physician last evaluated her several months ago and appellant did not keep a follow-up appointment. While Dr. Lee diagnosed lumbar strain and opined that it was the result of the accepted employment incident, she failed to explain how the employment incident caused the condition. A mere conclusion without medical rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet the claimant's burden of proof.⁷ The medical evidence must include rationale explaining how the physician reached the conclusion.⁸ Dr. Lee's report fails to provide the medical opinion on causal relation necessary to demonstrate that appellant's condition is related to the employment incident. Therefore, her report is insufficient to establish appellant's claim.

The progress notes of Ms. Clark, Mr. Sharpe and Mr. Russell, each a registered nurse, and the disability records of Ms. Sego, a nurse practitioner, have no probative value in establishing appellant's claim. Neither a nurse nor a nurse practitioner is a "physician" as defined under the Act.⁹

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a back condition causally related to the accepted May 21, 2006 employment incident. Appellant did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a back injury while in the performance of duty.

⁷ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁸ *Id.*

⁹ See 5 U.S.C. § 8101(2); see also *Roy L. Humphrey*, 57 ECAB 238 (2005).

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2008 and October 22, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 19, 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