United States Department of Labor
Employees' Compensation Appeals Board

N.D., Appellant	)	
and	)	**Docket No. 07-1902**
	)	**Issued: January 18, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, Employer	)	

Appearances:
Alan J. Shapiro, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 3, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated June 13, 2007, denying modification of the Office's May 31, 2006 decision finding that she failed to establish that she sustained an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issues in this case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on January 20, 2005.

FACTUAL HISTORY

On March 31, 2006 appellant, then a 39-year-old mail handler, filed a traumatic injury claim alleging that, on January 20, 2005, she injured the back of her neck, cervical area and sustained herniated and bulging discs when she fell on ice while walking to her car in the parking lot. She stopped work on January 3, 2006.

A December 20, 2005 magnetic resonance imaging (MRI) scan read by Dr. Benjamin P. Pschesang, a Board-certified diagnostic radiologist, found that there did not appear to be a subluxation of the spine. Dr. Pschesang determined that appellant had cervical spondylosis, a left paracentral disc protrusion-type disc herniation and disc space narrowing with marginal osteophyte formation at the C6-7 disc space level, disc herniation and bilateral uncovertebral joint degenerative spurring. Appellant also submitted a December 21, 2005 operative report from Dr. Leslie F. Gunzenhaeuser, Board-certified in anesthesiology and internal medicine, who performed a cervical epidural injection and diagnosed a herniated cervical disc with neck pain.

A January 10, 2006 MRI scan of the lumbar spine read by Dr. Philip J. Munschauer, a radiologist, revealed no sign of compression disc herniation or protrusion, mild disc bulging at L4-5 and desiccation and some mild spondylosis.

In an undated statement received by the Office on April 18, 2006, appellant described the January 20, 2005 employment incident and the dates for which she sought medical treatment. She submitted treatment notes from Todd S. Elwert, a chiropractor, dating from January 19 to December 25, 2005. The Office also received several physical therapy reports from January 27 to February 28, 2006 and some reports which are illegible.

By letter dated April 19, 2006, the Office informed appellant of the evidence needed to support his claim and requested that she submit such evidence within 30 days.

In a May 1, 2006 statement, appellant described the January 20, 2005 incident, as she walked to the parking lot after work and fell on "black ice" in the parking lot. She stated that initially she did not seek treatment; however, a few days later, she began to see a chiropractor. Appellant also noted that she had been working a light-duty assignment, at the time of her fall, due to recent hand surgery.

In a May 10, 2006 statement, Emory Ogletree, a supervisor, acknowledged that appellant informed him on January 21, 2005 that she had fallen in the parking lot while leaving work the previous evening.

In a May 16, 2006 report, Dr. Philip Zaacks, Board-certified in anesthesiology and pain management, noted that appellant was under his care since April 4, 2006. Appellant presented with pain involving her neck and light-headedness. Dr. Zaacks advised that appellant had improved a great deal regarding her mobility and her level of pain, but still had complaints of dizziness, which were not as severe as before. He indicated that he was at a loss regarding her dizziness and referred her for an ear, nose and throat evaluation and opined that, while her prognosis for returning to work was good, he could not specify a date.

By decision dated May 31, 2006, the Office denied the claim. The Office found that the evidence supported that the claimed incident occurred. However, there was no medical evidence that provided a diagnosis which could be connected to the January 20, 2005 fall at work.

On May 9, 2007 appellant requested reconsideration and submitted additional evidence. In a January 16, 2007 report, Dr. B. Salem Foad, a Board-certified rheumatologist, noted that appellant was seen for neck pain and a headache, of two years, which had worsened in the past year. He noted that appellant injured her neck in January 2005 when she fell on ice. Dr. Foad

also advised that appellant had complaints of light-headedness, dizziness and lower back pain. He diagnosed fibromyalgia, which he advised was causing most of appellant's pain. Dr. Foad indicated that appellant also had minimal osteoarthritis in the cervical and lumbar spine. He could not explain the severity of appellant's pain, dizziness or light-headedness on the basis of fibromyalgia and concluded that he was "not able to help her."

By decision dated June 13, 2007, the Office denied modification of the May 31, 2006 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation 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 States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[5] The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6] The medical evidence required to establish a causal relationship is usually rationalized medical 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.[7]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyet*, 41 ECAB 992 (1990).

[5] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[6] *Id*. For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

[7] *D.E.*, 58 ECAB ___ (Docket No. 07-27, issued April 6, 2007).

ANALYSIS

Appellant alleged that, on January 20, 2005, she injured her neck, cervical area and sustained bulging disc when she fell on ice in the parking lot, while walking to her car in the performance of duty. The Office found that the claimed incident occurred and there is no evidence that the employing establishment disputed that the January 20, 2005 incident occurred as alleged.

However, the medical evidence is insufficient to establish that the January 20, 2005 incident caused an injury. The medical reports of record do not establish that the fall on ice caused a personal injury. The medical evidence contains no reasoned explanation of how the incident on January 20, 2005 caused or aggravated an injury.[8]

Appellant submitted a December 21, 2005 operative report from Dr. Gunzenhaeuser, who diagnosed a herniated cervical disc with neck pain. However, Dr. Gunzenhaeuser did not discuss the cause of appellant's pain or her January 20, 2005 fall at work. This report is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on causal relationship.[9]

In a May 16, 2006 report, Dr. Zaacks, noted that he began treating appellant on April 4, 2006 for pain involving her neck and light-headedness. He stated that he was at a loss regarding her dizziness. The Board notes that Dr. Zaacks did not appear to be aware of a January 20, 2005 fall at work, nor did he provide a diagnosis other than to note that appellant had neck pain and light-headedness. He provided no reasoned opinion on causal relationship. While Office procedures recognize that, with certain "clear-cut" traumatic injuries, such as a fall from a ladder resulting in a broken leg, the record may require only an affirmative statement by a physician to establish causal relationship; this was not such a situation. In the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof.[10]

In a January 16, 2007 report, Dr. Foad diagnosed fibromyalgia and minimal osteoarthritis in the cervical and lumbar spine. He advised that the employing establishment injured her neck when she fell on ice in January 2005. However, Dr. Foad did not provide any medical rationale to support his opinion that the January 2005 fall caused a neck injury such as explaining the reasons why such an incident would cause a neck injury. Instead, he appears to have been repeating the history provided by appellant. As noted, the medical evidence required to establish causal relationship is rationalized medical evidence.

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[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[9] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[10] *Deborah L. Beatty*, 54 ECAB 340 (2003).

Appellant also submitted diagnostic reports dated December 20, 2005 and January 10, 2006. However, these reports are insufficient because neither Dr. Pschesang nor Dr. Munschauer provided an opinion on the causal relationship of the conditions found on the MRI scans. Therefore, their reports have no probative value in establishing causal relationship.[11]

Appellant also submitted several treatment notes from Dr. Elwert, a chiropractor. Section 8101(2) of the Act provides that the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[12] Dr. Elwert did not diagnose a subluxation.[13] In the absence of a diagnosis of subluxation based on x-rays, he is not a physician under the Act. The reports from Dr. Elwert, therefore, have no probative value.[14] The Office also received several physical therapy reports from January 27 to February 28, 2006, and some reports which are illegible. Health care providers such as nurses, acupuncturists, physician's assistants, and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[15]

In the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof. As the medical reports provided by appellant do not contain a firm diagnosis and a specific and reasoned opinion regarding the cause of appellant's condition, they are insufficient to establish that she sustained an employment injury on January 20, 2005.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty on January 20, 2005.

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

[12] 5 U.S.C. § 8101(2).

[13] The Office s implementing federal regulations define subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. *See* 20 C.F.R. § 10.5(bb).

[14] *Michelle Salazar*, 54 ECAB 523 (2003).

[15] *Jan A. White*, 34 ECAB 515, 518 (1983).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 13, 2007 is affirmed.

Issued: January 18, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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