United States Department of Labor
Employees' Compensation Appeals Board

B.K., Appellant	)	
and	)	**Docket No. 07-2160**
	)	**Issued: March 21, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Media, PA, 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 August 21, 2007 appellant filed a timely appeal from a March 2, 2007 merit decision of a hearing representative of the Office of Workers' Compensation Programs denying her claim for compensation. Under 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 met her burden of proof to establish that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On May 11, 2006 appellant, then a 48-year-old letter carrier, filed an occupational disease claim alleging that factors of her employment resulted in her back and leg pain. She advised that she was aware of her conditions on April 27, 2006 and realized the causal connection to her employment on May 3, 2006. Appellant stopped work on May 1, 2006. She was released to light-duty work on May 16, 2006 and worked whenever light duty was available.

In several statements, appellant provided details of her employment duties which included bending, lifting, twisting, turning and carrying mail. She indicated that, while walking her route during the week of April 24, 2006, she had back pain and pins and needles in her left thigh and leg. Appellant advised that she took some Advil and, since the pain was not constant, she "just lived with it [as] feeling pain is just part of the job." She reported to work on May 1, 2006, but left as the pain was worse and she was unable to carry mail. Appellant also mentioned to her employer that she had gardened the previous day. She indicated that, since she was not feeling better on May 2, 2006, her day off, she scheduled an appointment with Dr. Matthew O'Donnell, a family practitioner, for May 3, 2006. During a follow-up visit on May 10, 2006, Dr. O'Donnell advised appellant that her condition was work related.

In a May 12, 2006 letter, the employing establishment controverted the claim and alleged that appellant injured her back doing yard work. It noted that on May 1, 2006 appellant advised her supervisor, Richard Carey, that she hurt her back over the weekend doing yard work. The employing establishment stated that, during the week of April 22 to 26, 2006, appellant had worked overtime four of the five scheduled days and she did not report any complaints of back pain to her supervisor. It advised that, while she reported on her claim form that she first became aware of her condition on April 27, 2006, she worked nine hours that day plus two days thereafter, one in overtime status. A copy of Mr. Carey's statement along with copies of appellant's daily hours report were provided.

In an undated statement, Mr. Carey advised that, on Monday, May 1, 2006, appellant cased her route, but told him she was unable to make the deliveries as she had hurt her back doing yard work. He noted that appellant called him on Wednesday, May 3, 2006 to inform him that she would be out of work until Thursday, May 11, 2006 and that she also called on Wednesday, May 10, 2006 to tell him that her doctor thought her injury was work related.

Medical documentation appellant submitted includes medical notes from Dr. O'Donnell dated May 3 and 10, 2006, which found appellant totally disabled from May 3 to 17, 2006, results from a May 15, 2006 magnetic resonance imaging (MRI) scan and medical reports from Dr. William T. Ingram, II, a family practitioner. In a May 15, 2006 attending physician's report, Dr. Ingram diagnosed lumbar radiculitis and sprain. He checked a box "yes" on the form report indicating that the diagnosed condition was work related, noting that appellant's symptoms first occurred while working. In a May 15, 2006 report, Dr. Ingram noted that appellant had an onset of low back pain and left thigh tingling on April 25, 2006 while carrying mail. He diagnosed lumbar radiculopathy, herniated disc lumbar spine and lumbosacral strain/sprain. Dr. Ingram opined that appellant's work activity caused her symptoms and current diagnoses as there were no other back problems immediately prior to this episode or since that time. He further advised that appellant could work light duty. Other attending physician and duty status reports from Dr. Ingram were also provided.

In a June 22, 2006 letter, the Office found the evidence appellant submitted insufficient to establish her claim and requested additional factual and medical information.

In response, appellant submitted a statement again describing her job duties and the development of the claimed back and left leg condition. She indicated that her back felt fine

when she gardened on April 30, 2006. Additional reports from Dr. Ingram were submitted. He continued to note that appellant's symptoms first occurred while working.

In a July 6, 2006 report, Dr. Ingram stated that he was treating appellant for injuries sustained at work on April 27, 2006 and noted that he had initially stated that the date of injury was April 25, 2006. He advised that the MRI scan showed evidence of a disc extrusion of a traumatic etiology. Dr. Ingram explained that appellant had an underlying degenerative process which could predispose her to a work injury due to her heavy lifting and regular twisting motions involved in her job. He also stated that, independent of that fact, appellant sustained a new injury in addition to an exacerbation of her underlying conditions. Dr. Ingram noted that there was some confusion about whether appellant injured herself while gardening. While appellant had mentioned that she had been gardening, he noted that she did not feel any significant pain or have a specific event that could be characterized as an "injury." Thus, Dr. Ingam opined that appellant's back injury was sustained at work on April 25, 2006.

In a July 28, 2006 letter, Patricia A. Greenawait, a manager, advised that a witness statement supported Mr. Carey's statement that appellant had told him on May 1, 2006 that she injured her back doing yard work over the weekend. In a July 27, 2006 statement, Linda L. Del Piano, a clerk, noted that her statement was "written as requested by [Mr.] Carey and signed at request of [Ms.] Greenawait." In her statement, Ms. Del Piano indicated that on May 11, 2006 she had spoken to her case manager about a call taken from appellant. She stated that appellant had explained that "during the week of April 24 -- close to the end of the week (Thursday April 27), she began having back pain and tingling in the left thigh and left leg. Appellant continued working her scheduled days and, on Monday, May 1, she told her supervisor that [her] back was hurting -- probably from gardening on [the] weekend and requested to leave early. She left at 10:45 a.m."

By decision dated August 11, 2006, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the claimed events occurred as alleged.

Appellant requested an oral hearing that was held December 13, 2006. She testified that her back pain began the week of April 24, 2006 with intermittent pins and needles in her left thigh and got worse while working on April 27, 2006. Appellant stated that she took Advil each night and would feel better in the morning. She indicated that she had gardened and cut her lawn with a power lawn mower for approximately two hours on April 30, 2006. Appellant stated that, although she told her supervisor that she had gardened, she did not tell him that she had hurt her back gardening. She stated that her back was no worse after gardening than it had been after working that week.

Attending physician and duty status reports along with medical records from Dr. Ingram were received which indicated that appellant's condition was employment related.

In an October 11, 2006 report, Dr. Bruce Grossinger, a Board-certified neurologist, noted that appellant was working on April 27, 2006 and developed low back pain and painful paresthesias in the left anterior lateral thigh. He noted that appellant's account of injury indicated that she was involved with substantial lifting, carrying, bending and pushing while

working as a letter carrier and did not have any similar preexisting symptomatology. Dr. Grossinger diagnosed lumbar disc protrusion with lumbar strain and lumbar facet syndrome, a left lumbosacral radiculopathy and meralgia paresthetica with coexistent involvement of the left lateral femoral cutaneous nerve. He submitted further reports noting appellant's status and indicating that appellant's condition was due to an April 25, 2006 work incident when she was carrying mail and developed low back pain with radiation into the left leg with left thigh tingling.

By decision dated March 2, 2007, an Office hearing representative affirmed the Office's August 11, 2006 decision. She found that neither the factual nor medical evidence supported that she sustained an occupational illness or a traumatic injury due to inconsistencies in her factual description of the onset of her condition and her failure to provide her physicians with a complete history of injury.

On appeal, appellant contends that the medical evidence of record supports that appellant sustained the claimed conditions as a result of her employment activities.

LEGAL PRECEDENT

An employee who claims benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[2] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.[3] An employee has not met his burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[4] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[5] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[6]

After establishing the occurrence of an employment incident, an employee must show that any disability and/or specific condition for which compensation is claimed are causally

[1] 5 U.S.C. §§ 8101-8193.

[2] *See V.F.*, 58 ECAB __ (Docket No. 06-1497, January 30, 2007); *citing William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

[3] *Id.*; *citing Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

[4] *Id.*; *citing Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[5] *Id.*; *citing Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

[6] *Id.*; *citing Robert A. Gre*gory, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

related to an accepted employment incident or factor.[7] The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence.[8]

ANALYSIS

Appellant alleged that she sustained low back and left leg conditions as a result of her employment activities, which included bending, lifting, twisting, turning, and carrying mail. However, on her claim form, she indicated that April 27, 2006 was her actual date of injury. Appellant also noted that she had gardened on April 30, 2006 and indicated that the pain worsened on May 1, 2006 and she first sought medical treatment for her condition on May 3, 2006. The Office found that there were significant discrepancies in appellant's factual description of the onset of her condition and that she failed to establish the factual basis of her claim.

The Board finds that appellant failed to establish the occurrence of employment factors in the present case. There are significant inconsistencies in the evidence which cast serious doubt upon the validity of her claim.

Appellant's description of the onset of her condition and the factors she identified as responsible for her condition as well as the medical histories provided by the physicians of record are not consistent to establish the occurrence of either the April 27, 2006 incident or that her work duties attributed to her current back and left leg condition.

Appellant filed her claim as an occupational disease claim and reported that her back and left leg symptoms began during the week of April 24, 2006. However, she appears to be claiming that her injury was traumatic in nature as she identified April 27, 2006 as her actual date of injury. In any event, the employing establishment advised that appellant did not report any complaints of back pain to her supervisor and that she had worked overtime status during the week prior to and the two days after her alleged injury of April 27, 2006. Additionally, in several statements and in her testimony, she created a significant inconsistency when she discussed her back condition following her gardening activity of April 30, 2006. While appellant reported that her back would feel better in the morning after taking Advil each night, her actions following her April 30, 2006 gardening activity do not support this. Mr. Carey advised that appellant told him on May 1, 2006 that she could not perform her work duties because she hurt her back doing yard work over the weekend. While appellant maintained her pain remained the same after she gardened on April 30, 2006, she told Mr. Carey the next day that her pain had worsened and she sought medical treatment two days later on May 3, 2006. A witness, Ms. Del Piano, also heard appellant speak to Mr. Carey on Monday, May 1, 2006, and attribute her back pain to weekend gardening. There are no witness statements, contemporaneous with the onset of the claimed condition, which corroborates appellant's account of how the claimed injury or condition occurred.

[7] *Id.*, *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[8] *See id. See also Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

Other evidence submitted by appellant is insufficient to overcome this inconsistency. The earliest medical records in the file, Dr. O'Donnell's May 3 and 10, 2006 notes make no mention of employment as a cause of appellant's condition. Only after appellant filed her claim did any medical reports note a history of employment factors causing a claimed condition. These reports essentially repeated the history provided by appellant. Some of these reports also listed April 25, 2006, instead of April 27, 2006, as the date of injury. For example, Dr. Grossinger opined that appellant's low back and left leg conditions were causally related to the April 25, 2006 incident of carrying mail. Also, he does not indicate in his reports that he was aware that appellant gardened on April 30, 2006 and initially attributed her back pain to that activity. Dr. Ingram, in different reports, listed both April 25 and 27, 2006 as the date of injury. While, in his July 6, 2006 report, he noted that appellant gardened, he did not demonstrate an awareness of the evidence indicating that appellant told Mr. Carey on May 1, 2006 that weekend gardening caused back pain that prevented her from working. Thus, these reports provide little support that the incidents of April 27, 2006 occurred as alleged.

Although an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value, there are sufficient inconsistencies regarding the onset of the claimed condition to cast doubt upon the validity of her claim. In view of the inconsistency in the evidence regarding the onset of the claimed condition and appellant's ability to work without apparent difficulty following the alleged injury, appellant has not established her claim. Given that appellant has not established the factual aspect of her claim, it was appropriate for the Office to deny her claim without evaluating the medical evidence of record.[9]

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.

[9] *See V.F., supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 2, 2007 is affirmed.

Issued: March 21, 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