United States Department of Labor
Employees' Compensation Appeals Board

V.A., Appellant	)	
	)	**Docket No. 08-953**
and	)	**Issued: September 19, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, 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 February 13, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated January 24, 2008, which affirmed an August 9, 2007 decision denying her claim for a traumatic injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a back injury on April 13, 2007, as alleged.

FACTUAL HISTORY

On April 30, 2007 appellant, then a 40-year-old motor vehicle operator, filed a traumatic injury claim alleging that on April 13, 2007 she sustained a back injury while lifting heavy igloo coolers at work. She did not stop work but returned to a full-time limited-duty position.

In support of her claim appellant submitted return to work slips prepared by Dr. Myra J. Mark, a family practitioner, dated April 17 to May 9, 2007. Dr. Mark noted that appellant received treatment on April 17 and 20, May 7 and 9, 2007 and could return to full duty on May 9, 2007. An April 17, 2007 x-ray of the lumbar spine revealed minimal Grade I retrolisthesis L5 upon S1 with slight disc space narrowing. On April 18 and 25, 2007 a physician's assistant advised that appellant was treated for low back pain which occurred after she lifted coolers at work. She diagnosed back strain with radiculopathy and returned appellant to work light duty with restrictions. Appellant was also treated for a back strain by Dr. Mohan Y. Kareti, a Board-certified anesthesiologist, from May 7 to June 7, 2007. In return to work status forms, Dr. Kareti diagnosed low back strain and noted that appellant would be off work for three weeks starting May 15 and from June 7 to 16, 2007.

By letter dated June 26, 2007, the Office advised appellant that her claim was originally treated as a simple, uncontroverted case which resulted in minimal or no time loss from work and allowed medical payments up to $1,500.00. However, the merits of appellant's claim had not been formally adjudicated. Due to the receipt of additional evidence, formal adjudication of her claim would be undertaken. It requested that she submit additional information including a comprehensive medical report from her treating physician, which included a reasoned explanation as to how the April 13, 2007 incident contributed to her back condition.

Appellant submitted an undated report from Dr. Jeff Kirschman, a Board-certified family practitioner, who treated her following the April 13, 2007 incident. Dr. Kirschman diagnosed lumbar radiculopathy, spondylolisthesis at L5 acquired, displacement of lumbar intervertebral disc without myelopathy at L5-S1 and degeneration of lumbar intervertebral disc at L5-S1. He noted that appellant responded poorly to oral medications and epidural steroid injections. Appellant was totally disabled from May 8 to July 19, 2007, at which time she could return to limited duty.

In a decision dated August 9, 2007, the Office denied appellant's claim, finding that the medical evidence was not sufficient to establish that her back condition was caused by the April 13, 2007 incident.

Appellant requested an oral hearing which was held on November 14, 2007. In a July 10, 2007 report, Dr. Kareti treated appellant for low back and leg pain with associated numbness. He diagnosed lumbar radiculopathy. Dr. Kareti performed a lumbar epidural injection. In a July 11, 2007 attending physician's report, Dr. Kirschman noted treating appellant for back pain that started on April 13, 2007 while she was transporting and unloading filled containers and briefcases at work. He noted findings of ongoing low back pain radiating into the left leg and toes with associated numbness and tenderness at the midline lumbar spine and paraspinal area bilaterally. Dr. Kirschman noted that appellant had a history of lumbar degenerative disc disease at L5-S1. He advised that a May 25, 2007 magnetic resonance imaging (MRI) scan of the lumbar spine revealed degenerative changes in the facet joints in the lower lumbar spine with mild foraminal narrowing at L5-S1. Dr. Kirschman diagnosed lumbar radiculopathy, spondylolisthesis at L5 acquired, displacement of lumbar intervertebral disc without myelopathy at L5-S1 and degeneration of lumbar intervertebral disc at L5-S1. He opined that appellant injured her back while lifting igloo containers and was totally disabled from July 11 to 18, 2007. In a July 11, 2007 duty status report, Dr. Kirschman noted low back tenderness and diagnosed

lumbar spondylolisthesis and lumbar disc disease with displacement. He returned appellant to work on July 16, 2007 subject to restrictions. On August 8, 2007 a physician's assistant diagnosed lumbar radiculopathy, spondylolisthesis at L5, displacement of lumbar intervertebral disc without myelopathy at L5-S1 and disc degeneration at L5-S1. On October 11, 2007 Dr. Mark noted that appellant's condition had not improved, diagnosed low back pain and spondylolisthesis at L5 and referred appellant to a neurologist.

In a decision dated January 24, 2008, the hearing representative affirmed the August 9, 2007 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 filed within the applicable time limitation 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[2]

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.[3] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4]

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] The weight of medical evidence is determined by its reliability, its probative

[1] *Id.*

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

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

[4] *Id*.

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS

The evidence establishes that on April 13, 2007 appellant was lifting coolers at work as alleged. The Board finds however, that the medical evidence is insufficient to establish that she sustained a low back injury causally related to the April 13, 2007 lifting incident.

On June 26, 2007 the Office advised appellant of the medical evidence needed to establish her claim. Appellant submitted return to work slips prepared by Dr. Mark dated April 17 to May 9, 2007, which indicated that she could return to full duty on May 9, 2007. On October 11, 2007 Dr. Mark noted diagnoses and advised that appellant's condition had not improved. Her reports are insufficient to establish the claim, however, as she did not provide a history of injury[7] or address whether lifting on April 13, 2007 had caused or aggravated a diagnosed medical condition.[8]

Appellant also submitted several reports from Dr. Kareti who treated her for a low back strain and advised that she would be off work for three weeks. Dr. Kareti performed a lumbar epidural injection and diagnosed lumbar radiculopathy. However, he did not provide a history of injury or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition. Therefore, these reports are insufficient to meet appellant's burden of proof.

Reports from Dr. Kirschman from May to July 11, 2007, noted appellant's treatment for an April 13, 2007 injury. He noted diagnoses and advised that appellant was totally disabled from May 8 to July 19, 2007. As noted, Dr. Kirschman did not address how the April 13, 2007 work events caused or contributed to her preexiting back condition.[9] In a July 11, 2007 attending physician's report, he noted that appellant presented with a sudden onset of back pain commencing on April 13, 2007, which occurred when she was transporting and unloading containers and briefcases. Dr. Kirschman diagnosed lumbar radiculopathy, spondylolisthesis at L5 acquired, displacement of lumbar intervertebral disc without myelopathy at L5-S1 and degeneration of lumbar intervertebral disc at L5-S1. He opined that appellant's condition was caused by lifting and moving coolers at work. Although Dr. Kirschman supported causal relationship with a conclusory statement, he did not provide a rationalized opinion explaining how the lifting activities would cause or contribute to the diagnosed conditions.[10] He did not

[6] *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[7] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[8] *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006) (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).

[9] *Id.*

[10] *See Jimmie H. Duckett*, *supra* note 6.

explain the process by which lifting and moving igloo containers would cause her back condition or explain how her preexisting degenerative disc disease at L5-S1 was aggravated. Other records from Dr. Kirschman also fail to sufficiently address the cause of appellant's diagnosed medical conditions.

The remainder of the medical evidence does not provide an opinion on the causal relationship between appellant's job and her diagnosed low back condition. Furthermore, notes from a physician's assistant, dated April 18 to August 8, 2007 are insufficient as the Board has held that a medical opinion can only be given by a qualified physician and a physician's assistant is not a physician under the Act.[11]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[12] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained low back injury causally related to her April 13, 2007 employment incident.

[11] *See* 5 U.S.C. § 8101(2) (this subsection defines a ''physician'' as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See J.M.*, 58 ECAB ___ (Docket No. 06-2094, issued January 30, 2007) (reports of a physician's assistant are entitled to no weight as a physician's assistant is not a "physician" under section 8101(2)).

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

ORDER

IT IS HEREBY ORDERED THAT the January 24, 2008 and August 9, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 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