United States Department of Labor
Employees' Compensation Appeals Board

T.L., Appellant	)	
and	)	**Docket No. 08-986**
	)	**Issued: September 17, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Oakland, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 19, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 24, 2008, affirming the denial of her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an injury causally related to her modified job duties; and (2) whether the Office hearing representative properly denied the subpoena request.

FACTUAL HISTORY

On March 15, 2007 appellant, then a 39-year-old letter carrier, filed an occupational disease claim (Form CA-2) and a traumatic injury claim (Form CA-1). On the Form CA-2 she indicated she had returned to a light-duty job as a lobby director in October 2007, following hand surgery. Appellant stated that the job required standing and walking eight hours per day. She

noted aggravation to her leg and knee, as well as pain in the right side of her neck and numbness from her neck to her leg. The date appellant first realized her conditions were caused or aggravated by employment was reported as March 10, 2007. On the Form CA-1, she reported the date of injury as March 10, 2007. Appellant reported "continuous standing [and] walking on a worn right knee," and pressure on her neck and back. She described the nature of the injury as neck and nerve pain, with numbness on the right side of her body.

The Office developed the claim as an occupational disease. Appellant stopped working on March 10, 2007. In a March 19, 2007 letter, the employing establishment stated that appellant had returned to work on October 16, 2007 after a long absence due to carpal tunnel surgery. Appellant was provided a limited-duty job as a lobby host, which involved assisting customers with matters such as completing forms. According to the employing establishment, the duties were not on a continuous basis and a lobby host would stand or walk for 10 to 15 minutes at a time when needed.

In a report dated April 16, 2007, Dr. Robert Rovner, an orthopedic surgeon, indicated that appellant was seen for cervical pain. He stated, "Apparently [appellant] had a knee injury. Her knee gave way. She came to rely on the use of a cane. Because of this she then leaned to the right, using a cane in the right arm, and eventually developed pain in the right trapezius and a popping sensation in the back; finally numbness in the right arm." Dr. Rovner diagnosed C5-7 spondylosis.

Appellant also submitted a May 17, 2007 report from Dr. John Frazier, an orthopedic surgeon, who reported that appellant "states that she injured her knee while working on March 10, 2007. At that time, the patient was working in the lobby and was walking, and states her knee gave out. She fell on her right side and subsequently has progressed with continued discomfort and some swelling in the right knee." Dr. Frazier diagnosed right knee internal derangement with a medical meniscus tear and interstitial tear of the lateral meniscus.

By decision dated June 15, 2007, the Office denied the claim for compensation. It found the medical evidence of record insufficient to establish the claim.

Appellant requested an oral hearing before an Office hearing representative on June 19, 2007. In a letter dated October 27, 2007, she requested a subpoena for the attendance and testimony of her supervisors and the production of financial records. A hearing before an Office hearing representative was held on December 11, 2007. Appellant testified that the lobby host job involved standing and walking back and forth at a busy station, approximately six to six and one half hours a day. She stated her leg kept buckling and she used a cane while at work, "and on my neck and my back, it just froze up on me and that's when I filed a claim."

In a July 23, 2007 report, Dr. Michael Hebrard, a physiatrist, provided a history that appellant's knee had given way, she started to use a cane and began to develop neck symptoms. He provided results on examination and diagnosed right knee internal derangement and cervical strain. Dr. Hebrard opined that appellant had "industrially-related issues regarding her right knee and cervical spine." With respect to the knee, he opined that appellant had "suffered a cumulative trauma secondary to her years of mail carrying [which] subsequently worsened. The mark of degeneration is a wear and tear condition consistent with prolonged periods of standing

and walking, such as she has done during her many years of service as an [employing establishment] mail carrier." Dr. Hebrard reported that appellant's knee condition became significantly worse on March 10, 2007. As to the cervical spine, he opined that this was "a compensable consequence of her use of a self-procured cane due to knee pain that altered her gait, causing strain to the neck and back areas."

By decision dated January 24, 2008, the Office hearing representative affirmed the June 15, 2007 decision. The hearing representative found the medical evidence was not sufficient to establish an injury causally related to the identified employment factors. As to the request for a subpoena, the hearing representative denied the request on the grounds that it was untimely since it was made more than 60 days after the request for a hearing.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[2]

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[3]

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[4] A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.[5] Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.[6]

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[1] 5 U.S.C. §§ 8101-8193.

[2] 20 C.F.R. § 10.115(e), (f) (2005); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[3] *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

[4] *See Robert G. Morris*, 48 ECAB 238 (1996).

[5] *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[6] *Id.*

ANALYSIS -- ISSUE 1

Appellant filed both an occupational disease and a traumatic injury claim on March 15, 2007. A traumatic injury claim is a claim for an injury caused by a specific incident or incidents occurring within one workday or shift.[7] An occupational disease or illness is a condition produced by the work environment over a period longer than a single workday or shift.[8] She contended that standing and walking in her modified lobby host job from October 2007 to March 2008 contributed to an injury. The Office properly adjudicated the claim as an occupational disease or illness.

Appellant indicated that the lobby host job required a significant amount of standing and walking. She initially stated that it was eight hours per day, but at the hearing she indicated it was approximately six hours per day. While the employing establishment noted the standing and walking would not be continuous, it is reasonable to conclude that the described job assisting customers required a significant amount of standing and walking. Appellant also stated that she used a cane at work, and no contrary evidence was provided. She did not, however, provide a clear factual statement as to how often she used a cane or exactly how it was used.

With respect to the medical evidence, it is appellant's burden of proof to submit a rationalized medical opinion on causal relationship between a diagnosed condition and the identified employment factors. Appellant alleged injury to her neck or her right knee. As to the knee, Dr. Frazier reported a torn meniscus which he appeared to relate to a March 10, 2007 incident when appellant's knee gave way and she fell. Of note is the fact that in her traumatic injury claim form appellant did not allege a fall while at work on that date. As noted, the instant claim is for an injury resulting from standing and walking in the modified job. It is not readily apparent that Dr. Frazier had an accurate history of the claim.

Dr. Hebrard's opinion as to the knee referred to cumulative trauma from years of mail carrying. If that is appellant's claim then again she must submit factual evidence regarding her job activities as a mail carrier so that the Office may properly develop such a claim. The Board finds that there is no probative medical evidence on causal relationship between her diagnosed right knee condition and the identified employment factors of standing or walking in her modified position.

With respect to a cervical or other injury, the record does not contain a rationalized medical opinion on causal relationship. Dr. Rovner stated that appellant used a cane, "leaned to the right" and subsequently developed pain in the right trapezius, a popping sensation in the back and numbness in the right arm. He did not provide a complete history discussing the nature and extent of appellant's standing and walking in the lobby host job or her use of a cane. The diagnosis was C5-7 spondylosis but he did not provide a rationalized medical opinion explaining how the diagnosed condition was causally related to the lobby host job duties.

[7] 20 C.F.R. § 10.5(ee).

[8] 20 C.F.R. § 10.5(q).

The Board finds appellant did not meet her burden of proof to establish an injury causally related to factors of her federal employment. To the extent she alleges that walking and standing with a cane while working as a lobby host caused a neck injury, she did not submit sufficient factual and medical evidence to establish the claim. As to the right knee, there is no probative evidence on causal relationship between a diagnosed condition and the identified employment factors.

LEGAL PRECEDENT -- ISSUE 2

The Office's regulations provide that a claimant may request a subpoena, but the decision to grant or deny such a request is within the discretion of the hearing representative.[9] A claimant must submit the request in writing and send it to the hearing representative no later than 60 days after the date of the original hearing request.[10]

ANALYSIS -- ISSUE 2

Appellant requested a hearing before an Office hearing representative on June 19, 2007. The written request for a subpoena was dated October 27, 2007. As noted above, a subpoena request must be made within 60 days of the original hearing request. The subpoena request was not made within 60 days and therefore was not timely under the Office's regulations. The decision regarding the subpoena request is within the discretion of the hearing representative, and the hearing representative explained the basis for the denial in this case. There is no evidence the hearing representative abused his discretion in denying the October 27, 2007 subpoena request.

CONCLUSION

Appellant did not meet her burden of proof to establish an injury causally related to the identified employment factors. The hearing representative properly denied the request for a subpoena in accord with the Office's regulations.

[9] 20 C.F.R. § 10.619 (2007).

[10] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 24, 2008 and June 15, 2007 are affirmed.

Issued: September 17, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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