

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

P.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Albany, NY, Employer**

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**Docket No. 08-1408
Issued: February 19, 2009**

Appearances:
Paul Kalker, 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 April 15, 2008 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated June 13, 2007 and March 28, 2008. 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 sustained lower back and bilateral leg injuries in the performance of duty on January 17, 2007.

FACTUAL HISTORY

Appellant, a 44-year-old manual clerk, filed a traumatic injury claim on January 17, 2007 alleging that she injured her lower back and legs while lifting a tray of mail. In a January 17, 2007 Form CA-17 duty status report, Dr. Bruce M. Gordon, a specialist in neurosurgery, indicated that appellant sustained low back and bilateral leg injuries that day while lifting a tray of mail. He diagnosed low back strain, outlined work restrictions and placed appellant on light duty until January 27, 2007.

In a report dated March 9, 2007, Dr. Gordon stated that appellant had low back pain radiating into the bilateral lower extremities. He advised that the pain symptoms started on January 17, 2007 when she was at work lifting a box of mail. Dr. Gordon stated:

“[Appellant] has no prior history of back problems. She has not had significant improvement. The back pain is worse than the lower extremity pain and she grades it at 60 percent back and 40 percent lower extremity. Right lower extremity pain is worse than the left lower extremity pain. No numbness or tingling. Lower extremity pain will go down as far as the knees but is intermittent at this point. It is worse with prolonged walking, after about 30 minutes [appellant] develops discomfort, as well as with reaching. No lower extremity weakness.... [Appellant] has had no physical therapy. She has been out of work since the time of the accident.”

Dr. Gordon noted on examination that appellant experienced pain with flexion to the toes and extension of 15 degrees causing pain, with no cervical, thoracic or lumbosacral pain to palpation. He advised that her hip, knee and ankle range of motion and palpation was without pain or instability. Dr. Gordon noted that x-rays taken on January 19, 2007 showed multilevel degenerative disc disease and probable right L5/sacral congenital fusion. A magnetic resonance imaging (MRI) scan showed right L4-5 foraminal disc protrusion, mild stenosis at L3-4 and L4-5, multilevel degenerative disc disease and multilevel facet arthropathy at L2-3 through 5-1. Dr. Gordon diagnosed multilevel degenerative disc disease, lumbar spondylosis and facet arthropathy.

On April 19, 2007 the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It requested a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days.

In a May 15, 2007 report, Dr. Jorge G. Barlin, a Board-certified pathologist, stated:

“[Appellant] had a work[-]related injury on January 17, 2007. She ... has been my patient since 1999. [Appellant] has been seen for sprained ankle, upper back pain and two visits on record for lower back pain. One low back injury was when she was seen by Dr. Leopold on September 28, 1999 for right low back pain. X-ray then was unremarkable except sacralization of L5 on the right side. [Appellant] was out of work [from] September 17-25, 1999. She worked light duty October 4, 1999 and full duty on October 11, 1999. Another low back pain episode was when she was unable to work [from] August 22 and 23, 2000. Both injuries had no radicular pain.

“[The injury appellant sustained on] January 17, 2007 in my opinion is entirely separate from previous low back pain injuries in 1999 and 2000. [With regard to this] recent injury, [appellant] has bilateral low back pain, right more than the left,

with radicular pain going down the right leg. MRI [scan] report showed disc protrusion of L4-5, etc.”

By decision dated June 13, 2007, the Office denied appellant’s claim, finding that she failed to submit sufficient medical evidence to establish that she sustained a lower back or bilateral leg injury on January 7, 2007.

In a report dated November 27, 2007, Dr. Paul Spurgas, Board-certified in neurosurgery, advised that appellant experienced an onset of severe low back pain while at work. He stated that she had pain in the low back and thoracic areas for a period of several months. Appellant noted difficulty walking which worsened at night, with numbness and tingling. Dr. Spurgas advised that appellant had a cervical defect which could be causing her problem, as well as a combination of multiple changes which could be associated with spinal stenosis. He stated that appellant complained of pain in the neck area in a radicular distribution, with tingling in the left leg and radiation to the toes and at times the back is worse. Dr. Spurgas concluded:

“It would appear that [appellant’s] pain is related to exacerbation at work. The [her] MRI [scan is] consistent with degenerative disease or congenital stenosis, which I think have aggravated her current condition and [render] her temporarily disabled at this time. I do not think she should participate in any heavy[-]duty work for at least [six] weeks.”

By letter dated January 9, 2008, appellant through her attorney, requested reconsideration.

By decision dated March 28, 2008, the Office denied modification of its June 13, 2007 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing that 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, 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 elements of each and every 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 must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually

¹ 5 U.S.C. § 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ The medical evidence required to establish 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.⁶

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁷

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 his employment is sufficient to establish causal relationship.⁸ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Office accepted that appellant experienced lower back and bilateral leg pain while lifting a tray of mail on January 17, 2007. The question is whether this employment incident caused a personal injury. Such determination only be established by probative medical evidence.⁹ Appellant has not submitted rationalized medical evidence to establish that the January 17, 2007 employment incident caused a low back condition.

The report of Drs. Gordon, Barlin and Spurgas stated findings on examination and indicated that appellant had a low back strain and a bilateral leg pain. These reports, however, did not sufficiently relate the diagnoses to the January 17, 2007 incident at work. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹⁰

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term "injury"; see 20 C.F.R. § 10.5(a)(14).

⁶ *Id.*

⁷ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

⁹ *Carlone*, *supra* note 4.

¹⁰ See *Anna C. Leanza*, 48 ECAB 115 (1996).

In a March 9, 2007 report, Dr. Gordon stated that appellant had low back and lower extremity pain, which began with the January 17, 2007 work incident. He noted no prior history of any back conditions. Dr. Gordon noted that January 19, 2007 x-rays showed multilevel degenerative disc disease and probable right L5/sacral congenital fusion. An MRI scan of the same dated revealed right L4-5 foraminal disc protrusion, mild stenosis at L3-4 and L4-5, multilevel degenerative disc disease and multilevel facet arthropathy at L2-3 through 5-1. Dr. Gordon diagnosed multilevel degenerative disc disease, lumbar spondylosis and facet arthropathy. On May 15, 2007 Dr. Barlin stated that appellant had sustained a work-related injury on January 17, 2007. He noted that she was previously treated for right lower back pain on September 28, 1999 and August 22, 2000 and was off work for one week and one day, respectively. Dr. Barlin opined that appellant's January 17, 2007 work injury was separate from her previous low back injuries.

Dr. Spurgas advised in a November 27, 2007 report, that appellant experienced an onset of severe low back pain while at work. Appellant related difficulty walking which worsened at night, with numbness and tingling. Dr. Spurgas stated that she also had a cervical defect which could be causing her problem, in addition to a combination of multiple changes which could be associated with stenosis. He opined that appellant's pain was related to exacerbation at work. Dr. Spurgas asserted that her MRI scan was consistent with degenerative disease or congenital stenosis, which might have aggravated her current condition, resulting in her current state of temporary total disability. He recommended that appellant avoid heavy-duty work for at least six weeks.

Although the physicians of record presented diagnoses of appellant's condition, they did not adequately address how her low back or cervical conditions were causally related to the January 17, 2007 work incident. The medical reports of record did not explain how medically appellant would have sustained a lower back or bilateral leg pain due to lifting a tray of mail. There is insufficient rationalized evidence in the record that her lower back or bilateral leg injuries were work related.¹¹ Therefore, appellant failed submit sufficient evidence from a physician that explains how the work incident of January 17, 2007 caused or aggravated the claimed lower back and bilateral leg injuries.

The Office advised appellant of the evidence required to establish his claim; however, she failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the January 17, 2007 work accident would have caused the claimed injury. Accordingly, she did not establish that she sustained lower back and bilateral leg injuries in the performance of duty. The Office properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a lower back or bilateral leg conditions in the performance of duty.

¹¹ The Board notes that the opinion of Dr. Gordon, appellant's treating physician, is of limited probative value for the further reason that he apparently did not have an accurate medical history, as he did not indicate an awareness that she previously sustained lower back injuries in 1999 and 2000.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2008 and June 13, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 19, 2009
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