

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

R.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Hernando, MS, Employer**

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**Docket No. 08-2391
Issued: July 22, 2009**

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 2, 2008 appellant filed a timely appeal from a May 27, 2008 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of her claim. 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, causally related to factors of her federal employment.

FACTUAL HISTORY

On April 23, 2007 appellant, then a 30-year-old rural carrier, filed an occupational disease claim alleging that she sustained an injury to her low back in the performance of duty. She first became aware of her back condition and its relation to her work on April 2, 2007, the day she stopped work. The employing establishment controverted the claim, contending that appellant had notified her supervisor that she had "hurt her back by picking up her three-year old child at the local Wal Mart."

Appellant alleged that on April 2, 2007 she was bending over and emptying a “wire” filled with mail. When she stood up, she experienced pain in her low back. Appellant stopped dumping the mail and moved to sorting packages; however, her low back pain became worse. She indicated that a coworker notified her supervisor that she was in pain. Appellant’s supervisors called her over to sit in a chair; however, the pain did not subside and she left work to seek medical treatment.

In an April 2, 2007 disability certificate, Dr. William Wadsworth, Board-certified in internal medicine, placed appellant off work until she could see a neurosurgeon. In a report of that date, he related that appellant stated that, on March 6, 2007, she was bending over at work when she exacerbated her back pain. Dr. Wadsworth diagnosed low back pain and indicated it was “probably lumbar disc syndrome.” In an April 6, 2007 magnetic resonance imaging (MRI) scan of the lumbar spine, Dr. James D. Acker, a Board-certified diagnostic radiologist, diagnosed L5-S1 left disc extrusion with left S1 nerve compression.

In an April 6, 2007 report, Dr. Raja B. Khan, Board-certified in internal medicine, noted that appellant started having pain in her lower back two weeks earlier. He stated that there was “no precipitating event. It gradually got worse. Appellant related that her condition improved after a week. She also reported that she aggravated her back condition when she “lifted heavy parcels at her work.” Dr. Khan related a history that appellant had low back pain for a few days 12 months prior which spontaneously resolved. He diagnosed herniated disc syndrome and indicated that she likely had an L5-S1 or L4-5 herniated disc. In a duty status report, Dr. Khan noted that appellant hurt her back while lifting mail and diagnosed herniated disc. He advised that she could not resume her regular duties.

By letters dated May 30, 2007, the Office advised appellant and the employing establishment additional factual and medical evidence was needed.

In a June 1, 2007 statement, Ted Woodall, a human resources manager, controverted the claim. He stated that, on April 2, 2007, a few minutes after reporting to work, appellant alleged that she “bent over to empty a mail container and when she stood up; she felt pain in her lower back.” Mr. Woodall observed that appellant was five feet seven inches tall and weighed about 190 pounds. Appellant’s supervisor reported that appellant had earlier informed him that she injured her back when she picked up her child at the local Wal-Mart prior to April 2007.

In a June 6, 2007 report, Dr. Khan diagnosed herniated disc syndrome and recommended physical therapy. On June 22, 2007 he indicated that, when he initially saw appellant on April 6, 2007, she did not give a specific date as to when she developed her back pain. Dr. Khan added that appellant “now tells me that she developed back pain at work on April 2, 2007.”

In an undated statement, received on June 29, 2007, appellant further described her employment activities. On April 2, 2007 at approximately 5:15 a.m., she was emptying a wire filled with mail when she stood up and felt a stiffened pain in her lower back. Appellant believed that her employment duties of moving overly filled wires, standing on concrete floors for long periods of time, lifting and bending without back support, and repetitive movements contributed to her condition. She provided a list of coworkers who indicated that they witnessed the event of April 2, 2007.

By decision dated July 20, 2007, the Office denied appellant's claim. It found that the medical evidence did not establish that her low back condition was causally related to the accepted work-related activities.

On August 16, 2007 appellant requested a hearing, which was held on March 13, 2008. At the hearing, she described her employment duties and denied that she injured herself at home. A March 6, 2007 nurse's note stated that appellant was treated for low back pain. In a June 29, 2007 duty status report, Dr. Khan indicated that appellant could work full time with restrictions on lifting by squatting but no bending.

By decision dated May 27, 2008, the Office hearing representative affirmed the July 20, 2007 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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, 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion 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.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

⁴ *Id.*

ANALYSIS

The evidence establishes that appellant emptied a “wire” filled with mail on April 2, 2007. Appellant also engaged in activities which included moving overly filled wires, standing on concrete floors for long periods of time and engaging in lifting and bending over without back support. These employment duties were accepted by the Office. Appellant submitted insufficient medical evidence to establish that her low back condition was caused or aggravated by these activities or any other specific factors of her federal employment.

On April 2, 2007 Dr. Wadsworth placed appellant off work. He noted that she related having bent over on March 6, 2007 when she experienced back pain. Dr. Wadsworth diagnosed low back pain and indicated it was “probably lumbar disc syndrome.” However, he did not offer any opinion on whether bending over at work caused or aggravated the diagnosed medical condition. Dr. Wadsworth did not provide a rationalized, opinion addressing the cause of the diagnosed condition or relating her back condition to factors of her federal employment. As noted, appellant’s burden of proof includes the submission of rationalized medical opinion evidence. Dr. Wadsworth’s report is insufficient to establish appellant’s claim.

Appellant also submitted several reports from Dr. Khan. On April 6, 2007 Dr. Khan advised that appellant began to experience pain in her lower back two weeks prior. He noted that there was no precipitating event and that she reported that she aggravated her condition when she lifted heavy parcels at work. Dr. Khan also noted a prior history of low back pain for a few days 12 months earlier which had spontaneously resolved. He diagnosed herniated disc syndrome, likely an L5-S1 or L4-5 herniated disc. On June 22, 2007 Dr. Khan clarified that appellant “now tells me” that she developed back pain at work on April 2, 2007. Although he provided some general support for causal relationship, he did not provide any medical rationale to explain how appellant developed herniated disc syndrome while lifting parcels at work or due to her other employment activities. A medical opinion not fortified by medical rationale is of diminished probative value.⁵ This is important, as Dr. Khan advised that appellant had a preexisting history of low back symptoms. Consequently, the Board finds that this evidence is insufficient to establish appellant’s claim.

The record contains a March 6, 2007 report from a nurse. Section 8101(2) of the Act⁶ provides that the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Health care providers such as nurses are not physicians under the Act. Thus, a nurse is not competent to give a medical opinion.⁷ Consequently, the Board finds that the medical evidence is insufficient to establish appellant’s claim.

⁵ *Caroline Thomas*, 51 ECAB 451(2000).

⁶ *See* 5 U.S.C. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

⁷ *See Bertha L. Arnold*, 38 ECAB 282 (1986).

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.⁸ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹ Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a low back condition, causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated May 27, 2008 is affirmed.

Issued: July 22, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁸ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*