

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

L.N., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 08-2069
Issued: March 23, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated April 29, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit issues of 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 on May 19, 2007 as alleged.

FACTUAL HISTORY

On June 6, 2007 appellant, then a 38-year-old carrier, filed a traumatic injury claim alleging that she sustained radiculopathy in her right hip, leg and ankle while walking down uneven steps in the performance of duty on May 19, 2007. The employing establishment controverted her claim noting that she failed to mention her injury until she was informed that she was to be released from duty for failure to follow proper procedures.

By letter dated August 6, 2007, the Office requested additional factual and medical evidence in support of appellant's claim. Appellant alleged that Jo Ann Nood, a coworker, was aware of her injury and aided her on May 19, 2007. She submitted emergency room notes dated May 22, 2007 which stated that she had experienced right leg pain for four days and diagnosed radiculopathy.

By decision dated September 7, 2007, the Office denied appellant's claim on the grounds that she failed to submit the necessary medical opinion evidence to meet her burden of proof.

Appellant requested an oral hearing on September 30, 2007. She testified at the oral hearing on February 27, 2008. Following the oral hearing, appellant submitted a report dated March 7, 2008 from Dr. Frederick S. Lieberman, a Board-certified orthopedic surgeon, which noted appellant's history of walking down uneven steps while delivering mail on May 19, 2007 and the onset of pain radiating from her groin to her ankle. Dr. Lieberman stated that appellant's findings were compatible with extruded herniated discs from L4 to S1 and herniated discs from L1 through L3. He examined appellant on March 13, 2008 and repeated his diagnoses. Dr. Yves J. Manigat, a Board-certified surgeon, examined appellant on March 11, 2008 and diagnosed an early right inguinal hernia. He stated that appellant had experienced a fall at work.

By decision dated April 29, 2008, the hearing representative affirmed the Office's September 7, 2007 decision finding that appellant failed to submit the necessary rationalized medical opinion evidence establishing a causal relationship between her accepted employment incident and her diagnosed conditions.

LEGAL PRECEDENT

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.¹ In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be

¹ 20 C.F.R. § 10.5(ee).

resolved only by rationalized medical opinion evidence.² Such opinion of the physician must be one of reasonable medical certainty and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and the employment.³

ANALYSIS

The Office has accepted that the employment incident occurred as alleged. However, it found that appellant failed to submit the necessary medical evidence to establish a causal relationship between her diagnosed conditions and her employment incident.

In support of her claim, appellant initially submitted emergency room notes which supported that she had experienced leg pain since May 19, 2004 and diagnosed radiculopathy. These notes did not provide an opinion on the causal relationship between her diagnosed condition and her accepted employment incident and are therefore insufficient to meet her burden of proof in establishing a traumatic injury claim.

Appellant also submitted two reports from Dr. Liebermann, a Board-certified orthopedic surgeon, which provided a detailed history of injury and diagnosed herniated discs from L1 through S1. Dr. Lieberman failed to provide any opinion on the causal relationship between appellant's diagnosed conditions and her employment incident and his report is not sufficient to meet her burden of proof due to this defect.

In a report dated March 11, 2008, Dr. Manigat opined that appellant had a right inguinal hernia. He did not provide an accurate history of injury and did not provide an opinion on the causal relationship between appellant's diagnosed condition and her employment. Dr. Manigat's report is also insufficient to meet appellant's burden of proof.

Appellant has not submitted the necessary medical evidence including a proper history of injury, a definitive diagnoses, an opinion that her employment incident resulted in the diagnosed condition and supportive medical reasoning. She has, therefore, failed to meet her burden of proof in establishing a traumatic injury resulted in her May 19, 2007 employment incident.

CONCLUSION

The Board finds that appellant has not submitted sufficient medical opinion evidence to establish her claim.

² *Steven S. Saleh*, 55 ECAB 169, 171-172 (2003).

³ *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Program dated April 29, 2008 is affirmed.

Issued: March 23, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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