

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

A.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bridgeview, IL, Employer**

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**Docket No. 08-2303
Issued: May 4, 2009**

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 August 21, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated January 4 and May 14, 2008, finding that she did not sustain an injury while in the performance of duty. Pursuant to 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 a back injury while in the performance of duty causally related to factors of her federal employment.

FACTUAL HISTORY

On September 28, 2007 appellant, then a 44-year-old letter carrier, filed an occupational disease claim. On September 12, 2007 she first realized that her right-sided radiculopathy was caused by casing mail. A September 12, 2007 medical report of Dr. James Richardson, Board-certified in emergency medicine, stated that appellant experienced lumbar radiculopathy. A

September 20, 2007 form report of Dr. Chandra S. Anand, an attending physician,¹ stated that appellant had foraminal stenosis and osteoarthritis. A magnetic resonance imaging (MRI) scan of appellant's lumbar spine was performed on September 18, 2007 by Dr. Gregory T. Goldstein, a Board-certified radiologist, who noted diffuse arthritic changes with probable shallow right neural foraminal/lateral protrusion at L3-4 with mild neural foraminal narrowing and shallow left paracentral protrusion at L5-S1.

In a September 19, 2007 letter, Raymundo Ramos, an employing establishment supervisor, controverted appellant's claim. He stated that, on September 12, 2007, appellant complained about not feeling well and that she was unable to carry her mail on the street. Appellant told him that she experienced pain from her buttocks to her lower leg.

By letter dated November 23, 2007, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual evidence explaining whether her back pain was caused by casing mail on September 12, 2007 or over multiple work shifts. The Office requested additional medical evidence which included a rationalized medical report from an attending physician which described appellant's symptoms, results of examination and tests, diagnosis, treatment provided, the effect of treatment and opinion with medical reasons on whether exposure or incidents in appellant's federal employment contributed to her condition.

Progress notes dated October 17 through December 21, 2007 and a September 29, 2007 report from appellant's physical therapist reveal that she experienced back pain radiating down both lower extremities while she was casing and lifting mail. The September 29, 2007 report stated that appellant experienced low back pain while sorting and delivering mail on September 12, 2007. Appellant was also required to lift heavy boxes, parcels and mail which she performed one week ago. She left work and went to an emergency room where she was diagnosed as having a pinched nerve.

In a December 21, 2007 narrative statement, appellant described her injury. On September 7, 2007 she was on her route and, when she lifted mail to put into a tray on the front seat of her truck, she heard something snap in her back. Appellant rested for a moment and returned to deliver the mail. The next day, she experienced pain in her right leg and foot which made it difficult to walk. After casing mail for several days appellant could no longer withstand the pain and sought medical treatment.

In a December 21, 2007 report, Dr. Anand provided a history that on September 7, 2002 appellant snapped her back and experienced severe pain in her back and legs for which she received medical treatment on September 12, 2007. Despite physical therapy, appellant continued to experience pain and numbness in her back and legs. Dr. Anand opined that appellant's condition would be considered permanent if there was no improvement. She further opined that if appellant continued to perform her work duties, she would become totally disabled.

¹ The Board notes that Dr. Anand's professional qualifications are not contained in the case record.

By decision dated January 4, 2008, the Office denied appellant's claim. It found the medical evidence insufficient to establish that she sustained an injury causally related to factors of her employment.

On January 29, 2008 appellant requested a review of the written record before an Office hearing representative. She submitted additional progress notes from her physical therapists which noted that she experienced pain in her back and to both shoulders.

In a January 25, 2008 report, Dr. Anand provided a history that appellant sustained a back injury on September 7, 2007 while working at the employing establishment. She opined that appellant's radiculopathy, foramen stenosis and disability were caused by casing mail. Dr. Anand stated that appellant's symptoms prevented her from performing her regular work duties which required lifting and straining. These work duties caused appellant's back condition to worsen. As a result, Dr. Anand stated that she was on long-term disability and that she could no longer case mail.

In a March 24, 2008 report, Dr. Richard N. Egwele, a Board-certified orthopedic surgeon, provided a history that appellant first experienced pain in her low back radiating down to her left lower extremity on September 12, 2007 while casing mail. After reporting his findings on physical examination, Dr. Egwele diagnosed low back syndrome/insufficiency.

By decision dated May 14, 2008, an Office hearing representative affirmed the January 4, 2008 decision. He found that appellant did not sustain an injury in the performance of duty as she failed to establish that her work duties involved lifting and casing mail. The Office hearing representative also found that the medical evidence of record failed to establish that appellant sustained a medical condition causally related to her employment because it related her medical condition to employment factors that had not been established.²

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his 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.⁴ These are the essential

² Following the issuance of the Office hearing representative's May 14, 2008 decision, the Office received additional evidence. Appellant also submitted this evidence on appeal. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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 a causal relationship 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.⁶ Neither the fact that appellant's condition became apparent during a period of employment nor his belief that the condition was caused by his employment, is sufficient to establish a causal relationship.⁷

ANALYSIS

Appellant alleged that she sustained a back injury due to lifting and casing mail as a letter carrier. She stated that she lifted mail and put it into a tray while delivering mail on her route on September 7, 2007. Thereafter, appellant cased mail for several days while working at the employing establishment.

Appellant received treatment from a physical therapist on September 29, 2007 contemporaneous to September 12, 2007, the date she first realized that her back pain was caused by her employment. Dr. Anand's January 25, 2008 report stated that appellant's radiculopathy, foraminal stenosis and disability were caused by casing mail which required lifting and straining. Dr. Egwele's March 24, 2008 report stated that appellant first experienced pain in her low back radiating down to her left lower extremity on September 12, 2007 while casing mail. Mr. Ramos, an employing establishment supervisor, contended that appellant's statement of injury was inconsistent as she initially stated on September 12, 2007 that she did not know the origin of her back pain and then, several days later, that her back pain was caused by casing mail. The Board finds that the evidence of record establishes that appellant was required to lift and case mail during the course of her employment at the employing establishment. The

⁵ See *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁶ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁷ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

statement of Mr. Ramos is not sufficient to cast doubt on the validity of appellant's claim. Appellant claim was properly adjudicated as one of occupational disease.

The Board finds, however, that appellant did not submit sufficient medical evidence to establish that she sustained a back condition caused by the accepted employment factors. Dr. Richardson's September 12, 2007 report stated that appellant experienced lumbar radiculopathy. Dr. Anand's September 20, 2007 report found that appellant had foraminal stenosis and osteoarthritis. Dr. Goldstein's September 18, 2007 MRI scan of appellant's lumbar spine found diffuse arthritic changes with probable shallow right neural foraminal/lateral protrusion at L3-4 with mild neural foraminal narrowing and shallow left paracentral protrusion at L5-S1. However, in none of these reports, do the physicians of record address whether the accepted employment factors of lifting and casing mail caused or aggravated appellant's preexisting lumbar condition.

In a December 21, 2007 report, Dr. Anand opined that the pain and numbness to appellant's back and legs was permanent if no improvement occurred. She further opined that, if appellant continued to perform her work duties, she would become totally disabled. The Board has held that the mere diagnosis of pain does not constitute a basis for the payment of compensation.⁸ Dr. Anand did not specifically address how lifting or casing mail would cause or contribute to appellant's lumbar spine condition. She did not explain how appellant's physical condition and disability were caused by the accepted employment factors.

On January 25, 2008 Dr. Anand diagnosed radiculopathy and foraminal stenosis and disability were caused by casing mail. She stated that appellant's symptoms prevented her from performing her regular work duties which required lifting and straining. Dr. Anand stated that these work duties caused her back condition to worsen, which resulted in her being on long-term disability and unable to case mail. She failed to provide sufficient medical rationale to explain how lifting and casing mail caused or contributed to her lumbar condition and resultant disability. Dr. Anand did not discuss how the foraminal stenosis or osteoarthritis of appellant's spine was caused or aggravated by the work duties required in her letter carrier position.

Dr. Egwele's March 24, 2008 report provided a history that appellant first experienced pain in her low back radiating down to her left lower extremity on September 12, 2007 while casing mail. After reporting his findings on physical examination, he diagnosed low back syndrome/insufficiency. Dr. Egwele did not explain how appellant's back condition was caused or aggravated by the accepted employment factor of casing mail.

The progress notes of appellant's physical therapists do not constitute probative medical evidence as a physical therapist is not a "physician" as defined under the Act.⁹

⁸ *Robert Broome*, 55 ECAB 339 (2004).

⁹ 5 U.S.C. § 8102(2). This subsection defines the term physician. See *Roy L. Humphrey*, 57 ECAB 238 (2005) (medical opinion, in general, can only be given by a qualified physician); see also *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act).

The Board finds that there is insufficient rationalized medical evidence to establish that appellant sustained a back condition causally related to the accepted factors of her federal employment as a letter carrier. Appellant did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a back injury while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 14, 2008 decision of the hearing representative of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: May 4, 2009
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