United States Department of Labor
Employees' Compensation Appeals Board

L.F., Appellant	)	
and	)	**Docket No. 09-455**
	)	**Issued: September 3, 2009**
U.S. POSTAL SERVICE, POST OFFICE, San Jose, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 4, 2008 appellant filed a timely appeal from an October 24, 2008 merit decision of the Office of Workers' Compensation Programs that denied modification of a July 30, 2007 merit decision. 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 met her burden of proof to establish that she sustained an injury in the performance of duty on June 14, 2007.

FACTUAL HISTORY

On June 18, 2007 appellant, a 47-year-old mail handler, filed a traumatic injury claim (Form CA-1) for right shoulder pain. She attributed her injury to lifting heavy tubs all night, every day of the week, without help. Appellant alleged her injury occurred on June 14, 2007.

Appellant's supervisor controverted appellant's claim and her entitlement to continuation of pay. He alleged that on June 14, 2007 appellant told him that she hurt her neck when she fell

out of a chair at her other job, and that lifting tubs and moving equipment all week made it worse.

Appellant submitted a June 14, 2007 report signed by Dr. Beth Keegstra, Board-certified in emergency medicine, who reported that physical examination revealed mild soft tissue tenderness in the right side of her neck. Dr. Keegstra diagnosed acute cervical strain.

On June 22, 2007 Dr. George Frank diagnosed neck sprain and released her to full duty, but limited activities involving lifting, pulling and pushing to no more than 10 pounds. He offered no opinion regarding the cause of appellant's condition.

Appellant submitted a July 6, 2007 report signed by Dr. Keegstra, who noted that appellant had a history of intervertebral disc disease and neck injury. Dr. Keegstra reported that a computerized tomography (CT) scan of her cervical spine revealed a disc protrusion at C4-5 with mild central stenosis. The CT scan also revealed a cervical spinal fusion from C5-7 and degenerative changes resulting in a component of bony central spinal stenosis, but no acute fracture or dislocation. Physical examination revealed mild soft tissue tenderness in the right mid neck and left mid neck area. It also revealed mild vertebral tenderness of the mid cervical spine. Dr. Keegstra diagnosed appellant with cervical radiculopathy.

By decision dated July 30, 2007, the Office denied appellant's claim because the evidence of record did not demonstrate that her claimed medical condition was related to the established work-related event.

Appellant disagreed and requested reconsideration.

Appellant submitted reports dated July 24 and 25, 2007 from Dr. Sherman Tran, a Board-certified physiatrist, and Dr. James T. Luu, who diagnosed her neck sprain. In a separate report also dated July 25, 2007, Dr. Tran reported findings upon examination, a review of her medical history and diagnosed postcervical fusion at C5-6 and C6-7 as well as central canal stenosis at the C5-6 level. He opined that, appellant's cervical pain was most likely secondary to the foraminal stenosis and central canal stenosis. Dr. Tran noted that appellant appeared to have radicular symptoms to the upper left extremity and a burning sensation in the right hand, which he opined may be secondary to C6 radiculitis. He released appellant to full duty with no restrictions. Dr. Tran opined that appellant's condition arose out of and was caused by her industrial exposure on June 14, 2007.

Appellant submitted a July 9, 2008 report signed by Dr. Vladimir Oykhman, Board-certified in family practice, who reported findings upon examination and a review of her medical history. Dr. Oykhman noted that he had previously diagnosed her with thoracic strain, myofascial pain syndrome and right wrist tendinitis. He reported that appellant had a history of cervical spine surgery which was the result of an injury she sustained on March 1, 1999. Dr. Oykhman noted that appellant reported that she sustained an injury to the same area on March 9, 2006 and June 14, 2007 which she told him was work related. He opined that appellant's prior injuries made her very susceptible to injuries and that her current injuries were definitely in some way related to her preexisting injuries. Dr. Oykhman opined that the incident of June 4, 2007, when appellant fell out of a chair, played a role in her current medical problems.

By decision dated October 24, 2008, the Office denied modification of its July 30, 2007 decision because the evidence submitted failed to establish causal relationship between the alleged injury and the alleged employment factor.

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[1] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[2]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.

ANALYSIS

Appellant identified lifting heavy tubs on June 14, 2007 as the employment incident that caused her injury. Her burden is to establish, through production of substantive, probative, rationalized medical evidence, that her alleged injury is causally related to this identified employment incident. The Board finds that the evidence of record is insufficient to establish the claim as none of the medical evidence contains a rationalized medical opinion explaining causal relationship between appellant's alleged injury and the identified employment incident. Therefore, she has not met her burden of proof.

The relevant evidence of record consisted of reports and notes from Drs. Frank, Keegstra, Luu, Oykhman and Tran. The Board notes initially that Drs. Frank, Keegstra and Luu offered no opinion causally relating appellant's diagnosed condition to the employment incident on June 14, 2007. Dr. Oykhman commented on appellant's prior injuries, including her June 4, 2007 injury, as they related to her current diagnosis, but he offered no explanation for the relationship between her diagnosis and her June 14, 2007 employment duties. Dr. Tran opined that appellant's current condition could be apportioned between her injuries did not provide an explanation as to how her employment duties on June 14, 2007 physiologically caused or aggravated her current condition. Therefore none of these physicians proffered a probative

[1] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[2] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

rationalized medical opinion concerning the causal relationship between appellant's condition and the identified employment-related incident. The Board has held that medical opinions lacking a rationalized opinion on causal relationship are of diminished probative value.[3] Accordingly, appellant has not established her claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.[4] Because she failed to submit such evidence,[5] she has not met her burden of proof and therefore the Office properly denied her claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on June 14, 2007.

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 3, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[3] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *See also*, *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001).

[4] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007)*; Ruth R. Price,* 16 ECAB 688, 691 (1965).

[5] *See Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).