United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 09-2254**
	)	**Issued: August 10, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Fredericksburg, VA, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 8, 2009 appellant filed a timely appeal of the June 25, 2009 merit decision of the Office of Workers' Compensation Programs 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 established that she sustained back and right leg injuries in the performance of duty on May 29, 2008, as alleged.

On appeal appellant contends that her injuries were sustained while in the performance of duty.

FACTUAL HISTORY

On June 2, 2008 appellant, then a 62-year-old rural carrier, filed a traumatic injury claim alleging that on May 29, 2008 she pulled her back as a result of tripping over a rubber mat. She experienced pain in her back and right leg. Appellant stopped work on that date. In a June 3,

2008 medical report from Kirstin L. Garcia, a physician's assistant, stated that appellant experienced pain with walking and decreased strength in the right toe dorsiflexion. Ms. Garcia advised that a prior injury sustained by appellant was aggravated by the May 29, 2008 incident. She further advised that appellant was unable to work for the remainder of the week.

By letter dated June 12, 2008, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit medical evidence, including a rationalized medical report from an attending physician which described a history of injury and provided dates of examination and treatment, findings, test results, a diagnosis together with an opinion with medical reasons on why the diagnosed condition was caused or aggravated by the May 29, 2008 incident.

In a June 13, 2008 disability certificate, Dr. Robert G. Squillante, a Board-certified orthopedic surgeon, advised that appellant was totally disabled through June 14, 2008. In a June 19, 2008 report, he reviewed a history of her back pain and medical treatment. Dr. Squillante reported essentially normal findings on physical examination, noting appellant's inability to walk on her heels and toes on the right and reduced range of motion of the neck. On neurological examination he reported a 3/5 right-sided foot drop, a positive straight-leg raise and decreased sensation in the right L5 distribution. Dr. Squillante diagnosed lumbar stenosis, disc herniation and spondylolisthesis. He scheduled lumbar decompression and fusion to treat appellant's back conditions. In a June 25, 2008 report, Dr. Squillante described her back surgery on that date. In a July 9, 2008 physical capacity evaluation, he advised that appellant was unable to work due to postoperative recovery.

A June 19, 2008 report which contained an illegible signature stated that appellant sustained lumbar herniated nucleus pulposus. Appellant was out of work due to surgery. Another June 19, 2008 report contained an illegible signature and stated that she had lumbar stenosis, herniated nucleus pulposus, spondylolisthesis, severe right L5 radiculopathy pain and right foot drop commencing May 29, 2008. She would be out of work for two to three months following her June 25, 2008 surgery.

In a June 17, 2008 report, Dr. Dale W. Pcsolyar, a Board-certified neurologist, advised that electromyogram (EMG)/nerve conduction studies revealed acute right L5 radiculopathy. He also found severe lumbar stenosis at L4-5 down to seven millimeters based on a magnetic resonance imaging (MRI) scan.

In a June 6, 2008 report, Heather Brown, a physician's assistant, listed essentially normal findings on physical examination, noting that appellant almost stumbled twice secondary to foot drop and she had moderate palpable tenderness in the lower lumbar region, right side predominant. Ms. Brown advised that appellant could perform light-duty work.

By decision dated July 18, 2008, the Office denied appellant's claim. It found that the medical evidence was insufficient to establish that she sustained a back injury causally related to the accepted May 29, 2008 employment incident.

In an August 26, 2008 letter, appellant requested reconsideration. In a July 9, 2008 report, Ms. Brown advised that x-rays of appellant's back showed a stable position of hardware and space. In an August 4, 2008 report, Dr. Pcsolyar reviewed a history of the May 29, 2008 employment incident. He listed his physical examination and EMG/nerve conduction study findings. Dr. Pcsolyar reiterated his diagnosis of right L5 radiculopathy and severe lumbar stenosis at L4-5 down to seven millimeters. He opined that the May 29, 2008 employment incident caused appellant's radiculopathy. Dr. Pcsolyar stated that, although spinal stenosis was a congenital condition, the presence of this condition in an individual who subsequently sustained an injury was known to cause or be associated with nerve root compression, *i.e.*, radiculopathy. He concluded that appellant's June 25, 2008 surgery was causally related to the May 29, 2008 employment incident.

In an August 20, 2008 report, Dr. Squillante noted appellant's history of intermittent lumbar pain. He stated that a November 2007 MRI scan demonstrated chronic lumbar stenosis and spondylolisthesis. Dr. Squillante advised that, following the May 29, 2008 employment incident, appellant experienced a dramatic increase in lumbar and right lower extremity pain. Appellant began to develop a neurologic deficit in her right lower extremity. Dr. Squillante stated that an MRI scan demonstrated new evidence of disc herniation which caused severe stenosis that accounted for the new onset foot drop. He opined that appellant sustained a new disc herniation at L4-5 on May 29, 2008 that required surgery because prior to the incident, she did not suffer from any neurologic deficit of the lumbar spine or severe changes on MRI scan testing.

By decision dated November 26, 2008, the Office denied modification of the July 18, 2008 decision. It found that the medical evidence submitted by appellant was insufficient to establish that she sustained a back injury due to the accepted May 29, 2008 employment incident.

In a March 18, 2009 letter, appellant requested reconsideration. In treatment notes dated February 26 to July 15, 1999, Dr. Squillante addressed her right hip, left wrist and lower extremity and back conditions which developed following her November 23, 1996 employment injury.[1] In a January 16, 2009 report, Dr. Pcsolyar opined that appellant's lumbar radiculopathy and resultant surgery were caused by the May 29, 2008 employment incident. He stated that, although she had cogenital spinal stenosis, without the May 29, 2008 employment incident, she may have remained asymptomatic for an indefinite period of time.

In a June 25, 2009 decision, the Office denied modification of the November 26, 2008 decision. It found that the evidence submitted was insufficient to establish that appellant sustained a back injury causally related to the May 29, 2008 employment incident.

[1] Prior to the instant claim, appellant filed a claim assigned the Office File No. xxxxxx546 for a back injury she sustained on November 23, 1996 as a result of a motor vehicle accident. It accepted her claim and paid her wage-loss compensation.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 and that the claim was timely filed within applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged any disability or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.[4]

In order to determine whether an employee actually sustained an 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.[5] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[8] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[9]

ANALYSIS

The Office accepted that appellant tripped over a rubber mat on May 29, 2008 while working as a rural carrier. The Board finds that the medical evidence of record is insufficient to

[2] 5 U.S.C. §§ 8101-8193.

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

[4] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 3.

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[6] *Linda S. Jackson*, 49 ECAB 486 (1998).

[7] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

[8] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[9] *Charles E. Evans*, 48 ECAB 692 (1997).

establish that her back condition was caused or aggravated by the May 29, 2008 employment incident.

Dr. Squillante provided reports dated June 13 to July 9, 2008 which found that appellant sustained lumbar stenosis, disc herniation and spondylolisthesis for which she underwent surgery on June 25, 2008. He advised that she was totally disabled for work from June 13 through 14, 2008 and following her June 25, 2008 surgery. This evidence, however, does not discuss how the diagnosed conditions were caused or aggravated by the accepted May 29, 2008 employment incident. Dr. Squillante did not explain how tripping over a rubber mat would cause or contribute to the diagnosed lumbar stenosis, disc herniation and spondylolisthesis or the need for surgery. His opinion is insufficient to establish that appellant sustained an employment injury causally related to the accepted employment incident.[10] Dr. Squillante opined in an August 20, 2008 report that appellant's disc herniation at L4-5 was due to the May 29, 2008 employment incident because prior to May 29, 2008 she did not have any neurologic deficit involving the lumbar spine or severe changes on MRI scan testing. He noted that her history of intermittent chronic lumbar pain and November 2007 MRI scan findings of chronic lumbar stenosis and spondylolisthesis. This report, however, does not cure the deficiencies in rationale explaining the mechanism of injury and causal relationship. In light of appellant's prior history of back conditions, the need for medical rationale explaining how the employment incident caused or aggravated her diagnosed condition is important. The Board finds that Dr. Squillante's opinion is insufficient to establish appellant's claim. He did not adequately address her preexisting condition. Dr. Squillante's notes addressed the treatment appellant received for her right hip, left wrist, lower extremity and back conditions from February 26 to July 15, 1999 following her November 23, 1996 employment injury. This evidence predates the May 29, 2008 employment incident and is not relevant to whether the accepted employment incident caused or contributed to appellant's back condition. The Board finds that Dr. Squillante's treatment notes are insufficient to establish appellant's claim.

Dr. Pcsolyar's June 17, 2008 report found that appellant sustained acute right L5 radiculopathy and severe lumbar stenosis at L4-5 down to seven millimeters. He did not discuss how the diagnosed condition was caused or aggravated by the May 29, 2008 employment incident. Dr. Pcsolyar did not explain how tripping over a rubber mat

caused or contributed to her radiculopathy symptoms or severe lumbar stenosis at L4-5. The Board finds that his opinion is insufficient to establish appellant's claim.[11] Dr. Pcsolyar reiterated in reports dated August 4, 2008 and January 16, 2009 that appellant's right L5 radiculopathy, severe lumbar stenosis and surgery were related to the May 29, 2008 employment incident. He stated that, although spinal stenosis was a congenital condition, the presence of this condition in someone who sustained a subsequent injury was known to cause or be associated with radiculopathy. This opinion on casual relationship does not sufficiently address how appellant's preexisting lumbar stenosis was aggravated by the incident at work. Dr. Pcsolyar failed to provide sufficient medical rationale explaining how or why appellant's back conditions

[10] *See Willie M. Miller*, 53 ECAB 697 (2002).

[11] *Id.*

and resultant surgery were caused or contributed to by the May 29, 2008 employment incident. The Board finds that his opinion is insufficient to establish appellant's claim.

The reports from Ms. Garcia and Ms. Brown, physician's assistants, have no probative medical value in establishing appellant's claim. A physician's assistant is not a physician as defined under the Act.[12] The reports which contain illegible signatures do not constitute probative medical evidence as they lack any indication they were completed by a physician.[13]

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a back injury causally related to the accepted May 29, 2008 employment incident. She did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a back injury in the performance of duty on May 29, 2008, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[12] *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); 5 U.S.C. § 8101(2).

[13] *See D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).