

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

S.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Beachwood, OH, Employer**

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**Docket No. 09-1451
Issued: February 18, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 May 20, 2009 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated April 23, 2009. 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 an L4-5 disc herniation due to her March 6, 2003 employment injury.

FACTUAL HISTORY

On March 6, 2003 appellant, then a 28-year-old letter carrier, sustained injury when she slipped on ice injuring her left foot, low back and tailbone. The Office accepted her claim for left foot strain, left ankle sprain and coccyx strain on April 17, 2003.

Dr. Curtis W. Smith, an attending Board-certified orthopedic surgeon, diagnosed contusion and strain of the lumbar spine on April 9, 2003. On July 2, 2003 he noted that she had radiation of pain down the low back toward her left leg, foot and ankle and repeated his

diagnoses. The Office subsequently accepted a lumbar strain and contusion on July 28, 2003. On August 1, 2003 appellant underwent a magnetic resonance imaging (MRI) scan of the lumbar spine, which found no herniated discs or stenosis.

Dr. Smith released appellant to a trial of light duty for eight hours a day on October 29, 2003. On December 10, 2003 he found that appellant had limited range of motion in her back with pain and weakness, tenderness and spasm in the paraspinal muscles. Dr. Smith repeated these findings on January 14, 2004. His follow-up reports supported appellant's low back condition based on findings of limited range of motion, tenderness and spasm in her lower back.

On January 27, 2004 appellant filed a notice of traumatic injury claim for her left foot and ankle when she slipped on ice in the performance of duty.¹ The Office accepted on November 15, 2004 that she sustained a left ankle strain.

On August 2, 2006 Dr. Smith found that appellant had a smooth gait pattern with only mild tenderness in the lower back. He examined appellant on December 6, 2006 and noted that she reported a significant flare up of low back pain on the left with no new injury. Dr. Smith found tenderness and spasm in the paraspinal muscles bilaterally with positive left straight leg raising. X-rays were normal with no evidence of fracture, dislocation or arthritic change. Dr. Smith diagnosed contusion and strain of the lumbar spine and contusion of the coccyx.

Appellant filed a third notice of traumatic injury on October 6, 2004 alleging on September 24, 2004 she was chased by dogs while in the performance of injury. The Office accepted on October 20, 2004 her claim for left knee, ankle and foot sprains.²

In a note dated February 21, 2007, Dr. Smith listed appellant's complaint of pain radiating down to her buttocks and posterior thigh region. On examination, he found tenderness and spasm over the paraspinal muscles bilaterally and limited range of motion with a positive left straight leg raising. Dr. Smith requested authorization for a repeat MRI scan. Appellant underwent an MRI scan on March 6, 2007, which demonstrated a right posterolateral disc herniation at L4-5. Dr. Smith reviewed this study on March 20, 2007. On May 15, 2007 he stated that appellant had a herniated disc at L4-5, which did not require surgical intervention.

Dr. Susan E. Stephens, a Board-certified orthopedic surgeon, examined appellant on May 4, 2007 and noted her history of injury. She found no tenderness and full range of motion of the lumbosacral spine. Dr. Stephens found negative straight leg raising and normal motor and neurological examinations. She reviewed the MRI scan and found it demonstrated a very small L4-5 disc herniation with no impingement of the canal, foraminal or nerve root. Dr. Stephens diagnosed lumbosacral strain.

¹ The facts and circumstances regarding this injury are found in subsidiary file number xxxxxx398.

² The facts and circumstances of this claim are contained in subsidiary file number xxxxxx170.

In notes of June 12 and August 17, 2007, Dr. Smith stated that appellant had changed her activity level and that her pain had decreased. He noted that the Office had not accepted a herniated lumbar disc as employment related.

In a letter dated December 5, 2007, the Office informed appellant that the medical evidence of record did not support that her herniated disc was due to her accepted injuries.

On February 12, 2008 Dr. Smith stated that appellant reported right side back pain. In notes dated March 11 and April 22, 2008, he found tenderness and spasm in the paraspinal muscles of her low back and diminished range of motion. Dr. Smith diagnosed lumbar strain.

In an August 27, 2008 decision, the Office denied appellant's claim for a herniated lumbar disc due to her accepted March 6, 2003 employment injury. It found that she failed to submit sufficient medical opinion evidence to establish causal relation.

Appellant, through her attorney, requested an oral hearing on August 31, 2008. A November 4, 2008 note from Dr. Todd S. Hochman, a Board-certified internist, reported some tenderness throughout the lumbar region and decreased patellar reflexes. A November 11, 2008 MRI scan demonstrated a disc herniation at L5-S1 and small right disc protrusion at L4-5. On December 9, 2008 Dr. Hochman reviewed appellant's MRI scan and recommended pain management.

In a December 30, 2008 report, Dr. Charles V. Barrett, an osteopath, noted appellant's history of injury and MRI scan findings. He found mild lumbar pain with palpation. Dr. Barrett advised that appellant had underlying lumbar facet disease from genetic factors or weight. He stated, "After the work injury, the patient has experienced what appears to be lumbar facet pain which has been refractory to [treatment by medication]." Dr. Barrett recommended lumbar facet joint injections. He stated that aggravation of lumbar spondylosis without myelopathy should be added to her claim.

On January 1, 2009 Dr. Hochman found discomfort throughout the lumbar region and decreased deep tendon reflexes.

Appellant testified at the oral hearing on February 9, 2009 that she had no back pain prior to the March 6, 2003 employment injury. She retired from the employing establishment on January 25, 2007. The hearing representative left the record open for 30 days for the submission of additional medical evidence.

On April 3, 2009 Dr. Hochman requested the MRI scan contemporaneous with appellant's 2003 employment injury.

In an April 23, 2009 decision, the Office hearing representative affirmed the August 27, 2008 decision finding that the medical evidence of record did not establish a causal relationship between appellant's herniated lumbar disc and her accepted employment injury.

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.³ 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 resolved only by rationalized medical opinion evidence.⁴ As part of an employee's burden of proof, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The question of whether there is a causal relationship is medical in nature, and generally, can be established only by medical evidence. This medical opinion must be based upon a complete factual and medical background with an accurate history of appellant's employment injury. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

ANALYSIS

Appellant sustained injury on March 6, 2003 to her left foot, ankle, back and coccyx. The Office accepted that she sustained a back strain as a result of her accepted employment injury. Dr. Smith, a Board-certified orthopedic surgeon, addressed her continued back pain and recommended an MRI scan. The August 1, 2003 MRI scan of the lumbar spine revealed no herniated discs or stenosis. Appellant continued to experience back symptoms and Dr. Smith recommended a repeat MRI scan on March 6, 2007, which demonstrated a right posterolateral herniation at L4-5. Dr. Smith did not provide any statement addressing the causal relationship between appellant's herniated disc diagnosed in 2007 and her accepted employment injuries. His reports do not establish that appellant's 2007 disc herniation was due to the March 6, 2003 employment injury.

Dr. Smith referred appellant to Dr. Stephens, a Board-certified orthopedic surgeon, who examined her on May 4, 2007 and diagnosed lumbar strain. Dr. Stephens reviewed appellant's MRI scan and emphasized that the disc herniation was very small. She did not provide any opinion regarding the causal relationship between the disc herniation and appellant's accepted employment injury. As Dr. Stephens did not provide the necessary medical opinion evidence, her report is not sufficient to establish appellant's claim.

³ 20 C.F.R. § 10.5(ee).

⁴ *Steven S. Saleh*, 55 ECAB 169, 171-72 (2003).

⁵ *James Mack*, 43 ECAB 321, 328-29 (1991).

Appellant sought treatment from Dr. Hochman, a Board-certified internist, who requested another MRI scan. A November 11, 2008 MRI scan demonstrated a disc herniation at L5-S1 and small right disc protrusion at L4-5. Dr. Hochman reviewed appellant's MRI scan and recommended pain management. He did not offer any opinion on the relationship between the diagnosed disc herniations and the accepted employment injury. Following the oral hearing, Dr. Hochman requested that appellant provide him with a copy of her first MRI scan.

Dr. Barrett, an osteopath, examined appellant on December 30, 2008 and reviewed her history of injury and diagnostic studies. He stated that appellant had underlying lumbar facet disease from genetic factors or weight. Dr. Barrett noted that appellant did not experience any pain from this condition until after her work and recommended lumbar facet joint injections. Dr. Barrett stated that aggravation of lumbar spondylosis without myelopathy should be added to her claim. Dr. Barrett's opinion on causal relationship is, at best, vague and not well rationalized. He failed to provide any medical reasoning in support of his opinion. The Board has held that a temporal relationship alone is insufficient to establish causal relationship.⁶ The mere assertion that appellant's underlying condition was asymptomatic prior to her employment injury is not sufficient to establish that the employment injury aggravated the underlying lumbar facet disease.

CONCLUSION

The Board finds that appellant has not submitted sufficient medical opinion evidence to establish that her accepted employment injury resulted in a herniated disc or aggravation of lumbar degenerative disease.

⁶ *Louis R. Blair, Jr.*, 54 ECAB 348, 350 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 23, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 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