

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

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P.P., Appellant)	
)	
and)	Docket No. 09-1489
)	Issued: February 25, 2010
U.S. POSTAL SERVICE, POST OFFICE,)	
Des Moines, IA, Employer)	
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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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 27, 2009 appellant filed a timely appeal from the December 12, 2008 merit decision of the Office of Workers' Compensation Programs finding that she did not establish that her back condition was causally related to her accepted injury. 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 has met her burden of proof to establish that her back condition is causally related to her February 10, 2007 injury.

FACTUAL HISTORY

On August 22, 2007 appellant, then a 45-year-old clerk, filed a traumatic injury claim alleging that on February 10, 2007 she was lifting a tray of mail and felt a pull in her upper back and left side. She did not stop work but returned to a limited-duty position.

Appellant was treated by Dr. Alan J. Schultz, a chiropractor, for lumbar disc and hip pain. Dr. Schultz diagnosed thoracic sprain and subluxation of the thoracic spine and administered biomechanics anterior adjustive procedures at T4, T7 and T10. In reports dated August 9 to

September 17, 2007, he noted that appellant was a postal worker and her duties required constant standing and lifting. In reports dated September 18 to October 11, 2007, Dr. Schultz treated appellant for pain in the thoracic spine and interscapular region bilaterally. He noted that an October 1, 2007 x-ray of the thoracic spine revealed subluxation at T4 and C7. Dr. Schultz advised that subluxations could arise from repetitive motion and opined that appellant's work was the cause of her current spinal symptoms.

Appellant submitted June 20, 2007 thoracic spine x-ray report noting mild anterior wedging at T11 and T12, a magnetic resonance imaging scan of the thoracic spine dated June 22, 2007 which revealed mild anterior wedging of T11 and T12 which was age indeterminate and otherwise appearing normal. A June 29, 2007 bone scan revealed no abnormalities in the thoracic spine.

On August 23, 2007 appellant sought treatment from Dr. Susan L. Donahue, an osteopath, for upper back pain. Dr. Donahue had treated her since June 2005 for upper back complaints. She related that appellant reported performing repetitive lifting while at work that caused her back to become sore. On February 17, 2007 appellant presented with a one-week history of tenderness in her left upper back which she reported occurred while she was leaning over and lifting mail with her left hand. Dr. Donahue recommended physical therapy, anti-inflammatories and muscle relaxers. She noted an x-ray of the thoracic spine revealed a questionable anterior wedging deformity at T11 and T12 which were age indeterminate. Dr. Donahue returned appellant to work with restrictions. On July 31, 2007 appellant was seen in consultation with Dr. Clay E. Ransdell, an osteopath. She reported a three-month history of pain in the left thoracic shoulder region which developed at work after lifting a mail tray. Dr. Clay noted pain with palpation of the left upper thoracic region and tightness of the paraspinal muscles. He diagnosed left-sided upper to mid-thoracic level myofascial pain and recommended medial branch nerve blocks.

Appellant submitted reports from Dr. Donahue dated September 19 to 28, 2007. She diagnosed musculoskeletal upper back pain. In a duty status report dated September 25, 2007, Dr. Donahue noted that appellant could resume light-duty work on September 27, 2007. From October 2 to 4, 2007, appellant was also treated by Dr. Camille Rivera, a Board-certified physiatrist, who diagnosed thoracic/scapular pain and advised that appellant could resume work on October 8, 2007 with restrictions.

In a November 7, 2007 decision, the Office found insufficient medical evidence addressing causal relationship.

Appellant requested reconsideration and submitted a November 6, 2007 duty status report from Dr. Rivera who diagnosed thoracic myositis strain. He noted that she could resume work with restrictions. In reports dated December 27, 2007 to February 27, 2008, Dr. Marc Molis, a Board-certified family practitioner, treated appellant for upper back pain which she reported developed in February 2007 after a lifting incident at work. He found pain with abduction of the left shoulder and abnormal movement of the left scapula. Dr. Molis diagnosed left rotator cuff strain and left scapular dyskinesia and recommended physical therapy. On February 27, 2008 he noted improvement in appellant's condition with good range of left shoulder motion. Dr. Molis diagnosed left rotator cuff tendinitis and found that appellant was injured at work when she was pulling and lifting a heavy mailbag from a conveyor belt. A December 28, 2007 left shoulder

MRI scan revealed increased T2 signal within the supraspinatus tendon most likely due to tendinopathy and or partial thickness intrasubstance tear.

On May 6, 2008 the Office denied modification of the November 7, 2007 decision.

On May 20, 2008 appellant requested reconsideration. In a May 13, 2008 report, Dr. Molis reported that appellant initially injured herself in February 2007 when her arm was jerked back when attempting to stop a bin of mail on a conveyor belt. Dr. Molis noted that appellant was subsequently treated; however, her condition was not correctly diagnosed which led to treatment which did not improve her condition. He noted that upon being properly diagnosed appellant's condition improved.

In a decision dated August 8, 2008, the Office vacated the May 6, 2008 decision and accepted appellant's claim for left rotator cuff strain. Her claim remained denied for a back condition causally related to the February 10, 2007 incident.

On October 17 and 27, 2008 appellant requested reconsideration. In an October 16, 2008 note, Dr. Molis diagnosed scapular dyskinesia which he opined correlated to appellant's back pain. Dr. Molis advised that the scapula would compensate for a weak rotator cuff which caused pain and irritation in the upper back and shoulder blade region. He diagnosed appellant's back pain as scapular dyskinesia which directly related to her rotator cuff issues.

In a decision dated December 12, 2008, the Office denied modification of the August 8, 2008 decision.¹

LEGAL PRECEDENT

When an employee claims that he or she sustained an injury in the performance of duty, the employee must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The employee must also establish that such event, incident or exposure caused an injury. Once an employee establishes an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, which the employee claims compensation, is causally related to the accepted injury.² To meet his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.³ Medical conclusions unsupported by rationale are of diminished probative value and are insufficient to establish causal relation.⁴

¹ The Office also issued an April 1, 2009 schedule award decision. Appellant did not appeal this decision.

² See *Leon Thomas*, 52 ECAB 202 (2001).

³ See *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ *Albert C. Brown*, 52 ECAB 152 (2000).

ANALYSIS

The Office accepted appellant's claim for left rotator cuff strain. However, it denied her February 10, 2007 claim for a back condition.

Appellant submitted reports from Dr. Schultz, a chiropractor. The record establishes that Dr. Schultz obtained and reviewed x-rays in diagnosing a spinal subluxation at T4 and C7. He is considered a physician under the Act.⁵ While the reports of Dr. Schultz dated August 9 to September 17, 2007 provide some support for causal relationship, they are insufficient to establish that appellant sustained a back condition causally related to the accepted incident. Dr. Schultz noted that appellant's work duties required constant standing and lifting. He opined that subluxations could arise from repetitive motion and believed appellant's work was the cause of her current thoracic symptoms. Dr. Schultz did not address or describe the February 10, 2007 incident in which appellant lifted a tray of mail. The present claim is not one for an occupational disease. Dr. Schultz did not explain how a back condition occurred as a result of work duties over a single workday. Rather, he advised that appellant's thoracic symptoms were the result of repetitive standing and lifting over a period greater than one day or shift.⁶

Dr. Donahue treated appellant since June 2005 for preexisting upper back pain. On February 17, 2007 appellant reported a one-week history of tenderness in her left upper back which occurred after she leaned over to lift mail with her left hand. Although noting a history of the February 2007 incident Dr. Donahue did not provide a rationalized opinion explaining how the incident caused or contributed to upper back symptoms. Dr. Donahue's report indicates that appellant had a preexisting history of upper back pain for which she received treatment prior to February 17, 2007. Her other reports did not address causal relationship.

In a July 31, 2007 report, Dr. Ransdell diagnosed left side upper to mid thoracic level myofascial pain. She reported a three-month history of pain in the left thoracic shoulder region which developed at work after lifting a mail tray. Dr. Rivera diagnosed thoracic/scapular pain. However, neither physician provided a rationalized opinion explaining how the February 10, 2007 lifting incident caused or contributed to the diagnosed conditions.

In reports dated December 27, 2007 to February 27, 2008, Dr. Molis treated appellant for upper back pain which she reported developed in February 2007 after a lifting incident at work. Dr. Molis diagnosed left rotator cuff strain and left scapular dyskinesia. He opined that appellant's condition was employment related based on her presentation and history. Dr. Molis addressed the prior treatment that appellant had received, noting that her rotator cuff strain had not been properly diagnosed. Based on his reports the Office accepted this condition as related to the February 10, 2007 lifting incident. On October 16, 2008 Dr. Molis noted that appellant had pain with motion of her left scapula, diagnosed as scapular dyskinesia. He noted that the shoulder blade would compensate for the weakened rotator cuff. Such pain mimicked back pain to the upper back and shoulder blade region. He diagnosed appellant's back pain as scapular

⁵Section 8101(2) of the Act provides that chiropractors are considered physicians "only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary." See 5 U.S.C. § 8101(2).

⁶ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

dyskinesia and opined it was directly related to the rotator cuff issues. The Board finds that the opinion of Dr. Molis constitutes the weight of medical opinion in this case. He identified the pain appellant experienced following the accepted incident as related to her left shoulder condition.

Appellant also submitted other medical records including diagnostic tests. However, these records do not address whether the employment injury of February 10, 2007 was a cause of an upper back condition. The Board finds that appellant has not submitted sufficient evidence to establish that an upper back condition was caused or related to any activities at work on February 10, 2007.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an upper back condition causally related to her February 10, 2007 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 12 and August 8, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 25, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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