United States Department of Labor
Employees' Compensation Appeals Board

N.H., Appellant	)	
and	)	**Docket No. 10-183**
	)	**Issued: July 21, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Newark, NJ, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 28, 2009 appellant filed a timely appeal from an July 16, 2009 merit decision of the Office of Workers' Compensation Programs that denied her claim. 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 an injury in the performance of duty on May 2, 2009, causally related to her employment.

FACTUAL HISTORY

On June 3, 2009 appellant, a 52-year-old postal employee, filed a recurrence of disability claim (Form CA-2a) alleging that on May 2, 2009 she experienced pain on the right side of her lower back after "engaging a [bulk mail carrier]" to her tow tractor. The Office converted her claim to a traumatic injury claim.

In a May 21, 2009 note, Dr. Edward Novik, a Board-certified anesthesiologist, diagnosed lumbar radiculopathy.

Appellant submitted a May 27, 2009 report in which Dr. Howard Kessler, a Board-certified radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's lumbar spine revealed disc bulges at the L3-4 and L4-5 vertebrae.

By report dated May 28, 2009, Dr. Novik presented findings on examination and diagnosed lumbar facet syndrome. In a subsequent note, dated May 29, 2009, he released appellant from work from May 29 through June 17, 2009.

In a June 15, 2009 note, Dr. Nicholas Rizzitello, a chiropractor, reviewed appellant's history of injury, presented findings on examination and, based on his findings and appellant's subjective complaints, concluded that her condition was causally related to the "accident of November 15, 2007." He reported that appellant complained of pain and notes that "vertebral subluxations were palpable throughout the lumbosacral spine."

In a June 19, 2009 note, appellant described the events of May 2, 2009 and how this incident caused her condition.

By decision dated July 16, 2009, the Office accepted that the May 2, 2009 incident occurred as alleged but denied the claim because the evidence of record did not demonstrate that the established employment incident caused a medically-diagnosed injury.[1]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of his claim by the weight of the evidence,[3] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[4] As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

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[1] Appellant submitted additional 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). *See J.T.,* 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.* 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[6] *Jennifer Atkerson,* 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

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.[7] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

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.[9]

ANALYSIS

The Office accepted that the May 2, 2009 employment incident occurred as alleged. Appellant's burden is to demonstrate the accepted employment incident caused a medically-diagnosed injury. As noted above, causal relationship is a medical issue that can only be proven through probative, rationalized medical opinion evidence.

The reports and notes signed by Drs. Kessler and Novik have diminished probative value on the issue of causal relationship because they lack an opinion explaining how the established employment factors caused the conditions they diagnosed.[10] The weight of a medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of a physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[11] As neither Dr. Kessler nor Dr. Novik offered any medical explanation regarding the cause of appellant's diagnosed lumbar conditions, their reports do not constitute rationalized medical evidence supporting causal relationship. Consequently, this evidence is insufficient to establish the existence of a causal relationship between the accepted employment incident and appellant's condition.

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

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

[9] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

[11] *See Anna C. Leanza*, 48 ECAB 115 (1996).

While Dr. Rizzitello opined that appellant's condition was causally related to the "accident of November 15, 2007," his note has no evidentiary value because it does not constitute competent medical opinion evidence. A chiropractor is not considered a "physician" under the Act unless it is established his or her reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[12] Dr. Rizzitello reported that appellant complained of pain and notes that "vertebral subluxations were palpable throughout the [l]umbrosacral spine. [*sic*]" Because the existence of these "subluxations" was not established by x-rays, Dr. Rizzitello does not qualify as a "physician" for purposes of the Act and his report does not establish the requisite causal relationship.

An award of compensation may not be based on surmise, conjecture or speculation.[13] 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.[14] The fact that a condition manifests itself or worsens during a period of employment[15] or that work activities produce symptoms revelatory of an underlying condition[16] does not raise an inference of causal relationship between a claimed condition and an employment incident.

Because appellant has not submitted competent medical opinion evidence containing a reasoned discussion of causal relationship, one that soundly explains how the accepted employment incident caused or aggravated a firmly diagnosed medical condition, the Board finds appellant has not established the essential element of causal relationship.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on May 2, 2009, causally related to her employment.

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[12] The term physician includes chiropractors 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. 5 U.S.C. § 8101(2); *see also Jack B. Wood*, 40 ECAB 95 (1988); *Mary A. Ceglia,* 55 ECAB 626 (2004).

[13] *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).

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

[15] *E.A.,* 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[16] *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson,* 12 ECAB 155, 157 (1960).

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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