United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 09-1491**
	)	**Issued: May 25, 2010**
U.S. POSTAL SERVICE, POST OFFICE, North Las Vegas, NV, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 27, 2009 appellant filed a timely appeal from the April 9, 2009 merit decision of the Office of Workers' Compensation Programs denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant established that she sustained an injury causally related to factors of her federal employment or an April 3, 2008 incident.

FACTUAL HISTORY

On May 5, 2008 appellant, then a 54-year-old distribution clerk, filed an occupational disease claim alleging that on April 3, 2008 she experienced pain in her chest and neck while stocking retail postal products. She stopped work and went to the emergency room where she was admitted for a series of tests. Appellant was discharged from the hospital on April 6, 2008. She returned to work with restrictions.

In a November 14, 2008 letter, the Office informed appellant that the evidence submitted was insufficient to establish her claim. It advised her to submit details regarding the employment duties she believed caused or contributed to her condition and a medical report from a treating physician which contained a diagnosis and an opinion as to the cause of her condition.

Appellant submitted an undated statement describing her job duties and the April 3, 2008 incident at work. In a November 25, 2008 letter, Randy A. Brooks, station manager, advised that appellant was a retail associate and described her duties. He did not controvert the claim.

Appellant submitted medical evidence, including diagnostic studies obtained in April 2008. The record reflects that she was treated on April 3, 2008 by Dr. Benito Calderon, a Board-certified internist, who noted that appellant was hospitalized due for complaint of chest pain, dizziness, chills and sweating. On May 2, 2008 Dr. Calderon diagnosed osteopenia, hyperlipidemia, neck pain/cervical spasm; cervical herniated disc; chest pain, cervicogenic headache; bilateral occipital neuralgia, cervical radiculopathy, cervical spondylosis and referred appellant to Dr. Sofronio S. Soriano, Jr., a Board-certified physiatrist. In duty status reports (Form CA-17) dated July 7 to October 24, 2008, Dr. Calderon advised that appellant injured her neck while stocking supplies. He diagnosed a cervical herniated disc and spinal stenosis with radiculopathy. Dr. Calderon noted that appellant was totally disabled from October 13, 2008 to January 29, 2009 and worked with restrictions thereafter. In a November 20, 2008 progress report, he noted that appellant was undergoing pain management and had restrictions on lifting and bending her head.

In a December 1, 2008 report, Dr. Calderon stated that appellant was treated on April 3, 2008 with a history of stocking supplies and retail products at work when she twisted her neck to answer a customer. She felt pain radiating across her chest and experienced cold sweats and dizziness. Appellant was admitted to the hospital for evaluation and diagnostic tests ruled out any cardiac condition; however, the studies of the neck were positive for C5-6 level disc narrowing, eburnation spurring, a broad osteophyte annular bulge complex, stenosis and spinal cord compression. Dr. Calderon advised that appellant was disabled as of October 14, 2008. He stated that her work duties over the years contributed to the diagnosed conditions.

On April 17, 2008 Dr. Franco M. Lee, an anesthesiologist, noted that appellant had experienced neck pain with headaches for approximately six months. Appellant presented symptoms of a cervicogenic headache, bilateral occipital neuralgia, cervical radiculopathy and cervical spondylosis. Dr. Lee recommended a cervical spine magnetic resonance imaging (MRI) scan and injections to her neck. In a May 20, 2008 report, Dr. Raj Chanderraj, a Board-certified internist specializing in cardiovascular disease, advised that appellant had experienced typical anginal chest pains with exertion which had improved with physiotherapy of the neck. He indicated that the diagnostic studies of her heart were normal. Dr. Chanderraj recommended appellant undergo a lower extremity arterial ultrasound for her complaint of leg pain.

In a June 23, 2008 report, Dr. Soriano reiterated the April 3, 2008 history of radiating pain into the arms while stocking supplies. He diagnosed cervical radiculopathy, myofascial pain, left medial epicondylitis, degenerative disc disease of the cervical spine, parenthesis of upper extremities and possible carpal tunnel syndrome. In a June 23, 2008 disability certificate,

Dr. Soriano found appellant temporarily disabled from that day to July 7, 2008. On July 7, 2008 he advised that appellant could return to work with lifting restrictions.

In a July 21, 2008 report, Dr. William D. Smith, a Board-certified neurosurgeon, advised that appellant had a six- to eight-month history of severe cervical pain with headaches. Due to a worsening of her symptoms, appellant underwent diagnostic tests, chiropractic manipulation and evaluation by a pain specialist. Dr. Smith noted that appellant experienced pain at work and was currently on light duty. Diagnostic studies revealed osteophyte formation and foraminal stenosis at C5-6 with spinal cord compression. Dr. Smith diagnosed cervical spondylitic myeloradiculopathy at C5-6 and found that appellant was a surgical candidate.

In an April 21, 2008 report, Dr. G. Michael Elkanich, a Board-certified orthopedic surgeon, stated that appellant was seen for worsening cervical pain over the prior two months. He diagnosed significant cervical pain, cervical spondylolisthesis, right upper extremity radiculopathy and cervical disc degeneration. Dr. Elkanich noted that appellant was working light duty, which he found to be reasonable as long as there was no heavy lifting. He recommended an MRI scan, continuing pain management and physical therapy. On May 5, 2008 Dr. Elkanich diagnosed C5-6 disc protrusion, loss of disc space height and spinal stenosis. He noted that her repetitive job had aggravated her neck symptoms.

In a December 16, 2008 decision, the Office denied appellant's claim finding that the evidence was insufficient to establish that her cervical condition was causally related to her federal employment.

In a January 9, 2009 letter, appellant requested a review of the written record. On December 1, 2008 Dr. Lee described appellant's symptoms and treatment on April 3, 2008. On physical examination, he found appellant had signs and symptoms of cervicogenic headache due to cervical spondylosis and bilateral occipital neuralgia. Dr. Lee also diagnosed cervical degenerative disc disease at C5-6 and C6-7. He advised that C5-6 presented with a broad-based posterior disc osteophyte bulging, which may be producing symptoms of cervical radiculopathy.

In a January 8, 2009 report, Dr. Calderon reviewed the April 3, 2008 work incident. He advised that her cervical problems were most likely related to her employment as a distribution/window clerk as she was required to lift up to 70 pounds and perform repetitive tasks. Dr. Calderon stated that she was unable to return to the same function of duties. On March 16, 2009 he noted that appellant had been off work since October 12, 2008 due to a medical condition that affected her mobility. Appellant still complained of cervical pain and underwent surgery for a right rotator cuff tear repair on March 2, 2009, for which she received physical therapy.

In an April 9, 2009 decision, an Office hearing representative affirmed the December 16, 2008 decision. He found that the medical evidence did not adequately address how appellant's cervical condition was caused by the April 3, 2008 incident or other factors of her employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged,[2] and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] These are the essential elements of every compensation claim regardless of whether it is predicated upon a traumatic injury or an occupational disease.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying those employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[5] The evidence required to establish causal relationship, generally, is rationalized medical opinion evidence that provides a physician's well-reasoned explanation on how the employment duties caused or contributed to the claimant's diagnosed condition. To be of probative value, the opinion of the physician must be based on a complete factual and medical background of the claimant, be one of reasonable medical certainty, and be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relation between the two.[7]

ANALYSIS

Appellant attributes her cervical condition to the repetitive requirements of her federal employment as a distribution clerk including lifting and stocking of supplies. She also alleged an incident at work on April 3, 2008 when she experienced sharp pain in her chest and neck while stocking retail products. The Office has accepted that appellant performed such duties and was

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joseph W. Kripp*, 55 ECAB 121 (2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001). When an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury. *See also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (2002) (Occupational disease or Illness and Traumatic injury defined).

[3] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

[4] *Gary J. Watling*, 52 ECAB 357 (2001).

[5] *Michael R. Shaffer*, 55 ECAB 386 (2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

[6] *Leslie C. Moore*, 52 ECAB 132, 134 (2000); *see also Ern Reynolds*, 45 ECAB 690, 695 (1994).

[7] *See Louis T. Blair, Jr.*, 54 ECAB 348 (2003).

treated on April 3, 2008 following the incident at work. The Board finds that appellant has not submitted sufficient medical evidence to establish that her cervical condition was caused or contributed to by her work on April 3, 2008 or other factors of her employment.

On April 3, 2008 appellant was treated by Dr. Calderon, who noted her complaints on hospitalization of chest pain and dizziness. She underwent diagnostic testing that ruled out any cardiac condition but which revealed degenerative disc disease of the cervical spine and a herniation at C5-6 with spinal cord compression. Dr. Calderon's duty status reports listed various diagnoses, including a cervical herniated disc, radiculopathy and spondylosis/stenosis. However, he did not provide any medical narrative report that included a full history of appellant's preexisting medical condition or address any prior treatment she may have received. The reports of several other physicians, such as Dr. Lee and Dr. Smith, obtained histories of appellant having neck pain with headaches for approximately six to eight months prior to the April 3, 2008 incident. The reports of Dr. Calderon listed a history of appellant's work duties on April 3, 2008 and noted generally that her duties as a distribution clerk required her to lift up to 70 pounds and perform repetitive tasks. Dr. Calderon advised that appellant was unable to return to this level of activity. He did not adequately explain how appellant's work duties were competent to cause or contribute to the development of the diagnosed cervical degenerative disease or disc herniation at C5-6. Causal relationship is a medical issue that must be established through rationalized opinion by a physician.[8] Dr. Calderon did not provide a full medical history or address the nature of the relationship between appellant's cervical condition to her work activities with a reasonable degree of medical certainty. As noted, the mere fact that a condition manifests itself during a period of employment is not sufficient to establish causal relation. Dr. Calderon's reports are not clear as to the dates appellant was found disabled for work due to her cervical condition or whether her disability commencing on or about October 12, 2009 was attributed to the claimed condition, as he noted that she was off work due to a medical condition that affected her mobility. The record also indicates that appellant received treatment for a right rotator cuff condition for which she underwent surgery on March 2, 2009. Due to these deficiencies, the reports of Dr. Calderon are not sufficient to establish appellant's claim for benefits.

Appellant was referred by Dr. Calderon to Dr. Soriano, who reported a history of the April 3, 2008 incident at work. Dr. Soriano diagnosed various conditions including cervical radiculopathy, degenerative disc disease, left medical epicondylitis and possible carpal tunnel syndrome; however, he similarly failed to address how either the incident at work or any of appellant's work activities caused or contributed to the diagnosed conditions. He noted that appellant was disabled from June 23 to July 7, 2008, at which time she could return to work with restrictions. Dr. Soriano did not address how her disability for this period was related to her claimed cervical condition or caused by any job duties she performed. His reports lack a full medical history or rationalized opinion addressing the issue of causal relation.

Dr. Elkanich obtained a two-month history of worsening cervical pain and noted appellant's hospitalization. He diagnosed cervical spondylolisthesis, right upper extremity radiculopathy and cervical disc degeneration. In addressing causal relationship in a May 5, 2008

[8] *John W. Montoya*, 54 ECAB 306 (2003).

treatment note, Dr. Elkanich stated generally that appellant had a very repetitive job which had aggravated her symptomatology. This is not a well-explained opinion as he failed to address the specific duties performed by appellant or how such work was competent to aggravate or contributed to her cervical symptoms. Therefore, Dr. Elkanich's opinion on causal relation is of reduced probative value.

Similarly, neither Dr. Smith nor Dr. Chanderraj offered an opinion as to whether appellant's diagnosed cervical condition was work related. Dr. Smith noted only that appellant had experienced pain at work and at other times and was performing light duty. Dr. Chanderraj, a specialist in cardiovascular disease, advised only that appellant's diagnostic studies revealed that her heart was normal. Dr. Lee addressed appellant's cervical symptoms and recommended diagnostic testing. He failed to address the issue of how appellant's work activities would cause or aggravate any diagnosed medical condition. Dr. Lee noted the April 3, 2008 work incident in a report but did not address whether appellant's diagnosed cervical conditions were work related.[9] Consequently, these medical reports are insufficient to establish appellant's claim.

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.[10] Causal relationships must be established by probative medical opinion. Appellant failed to submit sufficient evidence to support that either the work incident of April 3, 2008 or her federal duties caused or contributed to her cervical condition.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a cervical condition due to the factors of her federal job duties or the April 3, 2008 incident at work.

[9] *Id.*

[10] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Dennis M. Mascarenas, supra* note 3 at 218.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: May 25, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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