

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

D.W., Appellant

and

**U.S. POSTAL SERVICE, MID-HUDSON
PROCESSING & DISTRIBUTION CENTER,
Newburgh, NY, Employer**

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**Docket No. 10-805
Issued: November 10, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 1, 2010 appellant, through her attorney, filed a timely appeal of the December 17, 2009 merit decision of the Office of Workers' Compensation Programs finding that she did not sustain a traumatic 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 established that she sustained a back injury on May 21, 2008, as alleged.

On appeal, counsel contends that the Office's decision is contrary to fact and law.

FACTUAL HISTORY

On May 21, 2008 appellant, then a 49-year-old mail clerk, filed a traumatic injury claim alleging that she experienced severe pain in her back that radiated down to her right leg and foot which became numb while labeling mail. She stopped work on that date. A June 26, 2002

medical report from Dr. Jacques A. Gulekjian, a radiologist, advised that a computerized tomography (CT) scan of appellant's lumbar spine demonstrated a mild diffuse bulge of the disc at L4-5, a mild central bulge of the disc at L5-S1 with minimal impression on the thecal sac and mild facet arthropathies at L5-S1. A September 21, 2006 report regarding Dr. Carl A. Silverio, a Board-certified radiologist, advised that a magnetic resonance imaging (MRI) scan of appellant's lumbar spine revealed no focal disc herniations or significant central canal stenosis. Dr. Silverio found moderate L5-S1 degenerative disc disease with mild bulging and mild right-sided spondylotic neural foraminal narrowing.

By letter dated May 29, 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 opinion 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 21, 2008 incident.

In letters dated May 23 and 28, 2008, the employing establishment controverted appellant's claim, contending that she had a preexisting back condition and had filed numerous claims. It stated that her claimed injury was more likely associated with her overall condition. The employing establishment contended that appellant acknowledged that the mail handling equipment she was working on at the time of injury was overloaded but, she failed to request assistance.

An undated form report which contained a physician's illegible signature indicated that appellant was first examined on May 28, 2008. She had right lumbar radiculopathy that was caused or aggravated by an employment activity. Appellant was totally disabled commencing May 21, 2008.

In a May 28, 2008 report, Dr. Donald Roth, a family practitioner, obtained a history of the May 21, 2008 incident and appellant's medical treatment. He reported essentially normal findings on physical examination with minimal spasm in the right paralumbar region. Dr. Roth diagnosed right lumbar radiculopathy secondary to an acute injury and a history of mild degenerative disc disease and facet arthropathy.

A June 23, 2008 report which contained a physician's illegible signature reviewed a history of the May 21, 2008 incident. Appellant had an acute back sprain and was unable to perform her regular work duties.

By decision dated July 3, 2008, the Office denied appellant's claim. It found the evidence insufficient to establish that the May 21, 2008 incident occurred at the time, place and in the manner alleged. The medical evidence was also insufficient to establish an injury causally related to the claimed employment incident.

On August 12, 2008 appellant requested reconsideration. In an August 4, 2008 report, Dr. Tejas B. Parikh, a Board-certified radiologist, advised that an MRI scan of appellant's lumbar spine demonstrated central disc protrusion at L5-S1 that indented the thecal sac without

significant central canal stenosis, mild right neural foraminal narrowing at L5-S1 and mild disc bulge at T12-L1 without significant central canal stenosis.

An August 4, 2008 disability certificate which contained a physician's illegible signature stated that appellant was totally disabled through August 11, 2008. An August 14, 2008 report indicated a date of injury as May 21, 2008. Appellant was diagnosed as having pain in her low back and right leg.

In an August 14, 2008 progress note, Dr. Mahmoud A. K. Abu-Ghanaam, an attending Board-certified anesthesiologist, stated that appellant had chronic mechanical lower back pain due to a work-related injury with a L5-S1 disc bulge based on Dr. Parikh's August 4, 2008 MRI scan. She also had central disc protrusion at L5-S1 with right neural foraminal narrowing at that level and facet arthritis.

By decision dated October 31, 2008, the Office modified the July 3, 2008 decision to reflect that appellant established that the May 21, 2008 mail labeling incident occurred as alleged. However, it found that the medical evidence was insufficient to establish that she sustained a back condition due to the work incident and affirmed the denial of her claim as modified.

In an October 14, 2009 letter, appellant, through counsel, requested reconsideration. In progress notes dated June 11 and August 13, 2009, Dr. Abu-Ghanaam listed normal findings on physical examination. He addressed a treatment plan for appellant's chronic mechanical back pain syndrome due to disc and facet disease with lumbar radiculopathy. In a June 11, 2009 report, Dr. Abu-Ghanaam obtained a history of the May 21, 2008 employment incident and appellant's medical treatment. He found that she had minimal spasm in the right paralumbar region. Dr. Abu-Ghanaam stated that appellant had central disc protrusion at L5-S1 indented the thecal sac without significant central canal stenosis. Appellant also had mild disc bulge at T12-L1 without significant central canal stenosis. Dr. Abu-Ghanaam noted that the last MRI scan did not show T12-L1 damage. He reiterated the diagnosis of mild right neural foramina narrowing at the L5-S1 level. Dr. Abu-Ghanaam stated that appellant's original 1997 back injury had worsened as a result of repeated wear and tear related to work during the past 11 years.¹ He advised that a disc was pressing on a nerve. Dr. Abu-Ghanaam opined that appellant could not return to work due to a high risk that it would aggravate her back pain and increase the chance of sustaining an additional disc bulge or disc herniation which could be a major setback related to her pain and ability to function.

In a December 17, 2009 decision, the Office denied modification of the October 31, 2008 decision, finding the medical evidence insufficient to establish that appellant sustained an injury causally related to the accepted May 21, 2008 employment incident.

¹ The record indicates that appellant previously filed a claim for a back injury on September 2, 1997 under Office File No. xxxxxx573. The record does not indicate whether the Office accepted her claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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; that the claim was filed within applicable time limitation; that an injury was sustained while in the performance of duty as alleged; 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 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 was labeling mail on May 21, 2008 while working as a mail clerk. The Board finds that the medical evidence of record is insufficient to establish that her back condition was caused or aggravated by the May 21, 2008 employment incident.

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).

Dr. Roth's May 28, 2008 report reviewed a history of the May 21, 2008 incident and appellant's medical treatment. He listed essentially normal findings on physical examination with minimal spasm in the right paralumbar region. Dr. Roth advised that appellant had right lumbar radiculopathy secondary to an acute injury and a history of mild degenerative disc disease and facet arthropathy. However, he does not discuss how the lumbar radiculopathy condition was caused or aggravated by the accepted May 21, 2008 employment incident.¹⁰ Dr. Roth did not explain how labeling mail would cause or contribute to the diagnosed lumbar radiculopathy. Further, he did not provide any medical opinion addressing whether the preexisting degenerative disc disease and facet arthropathy conditions were causally related to the May 21, 2008 employment incident. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹¹ The Board finds that Dr. Roth's report is insufficient to establish that appellant sustained an employment injury causally related to the accepted employment incident.

Dr. Abu-Ghanaam's reports found that appellant's chronic mechanical lower back pain with a L5-S1 disc bulge, central disc protrusion at L5-S1 which indented the thecal sac without significant central canal stenosis with mild right neural foraminal narrowing at that level, facet arthritis and lumbar radiculopathy were due to an employment-related injury. He stated that although she initially had a mild disc bulge at T12-L1 without significant central canal stenosis, the last MRI scan did not show T12-L1 damage. Dr. Abu-Ghanaam further stated that appellant's 1997 back injury had worsened as a result of repeated wear and tear related to work during the past 11 years. However, Dr. Abu-Ghanaam failed to address the nature of appellant's mail labeling activities on May 21, 2008 or how they could cause a worsening of appellant's 1997 back injury. Further, he did not explain how the diagnosed lumbar conditions were causally related to the May 21, 2008 employment incident. In light of appellant's prior history of back conditions, the need for medical rationale explaining why the employment incident caused or aggravated her diagnosed conditions is important. The Board finds that Dr. Abu-Ghanaam did not adequately address her preexisting condition. Further, Dr. Abu-Ghanaam advised that appellant could not return to work as it increased the risk of aggravating her back pain and of additional disc bulge or disc herniation which could be a major setback related to her pain and ability to function. The Board has held that fear of future injury is not compensable under the Act.¹² Dr. Abu-Ghanaam did not provide a reasoned explanation regarding why the claimed incident in the workplace could aggravate appellant's diagnosed back conditions. The Board finds, therefore, that his reports are insufficient to establish appellant's claim.

Dr. Parikh's August 4, 2008 diagnostic test results regarding appellant's lumbar conditions do not provide any medical opinion addressing whether the diagnosed conditions are causally related to the May 21, 2008 employment incident.¹³ This evidence, therefore, is insufficient to establish appellant's claim.

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

¹¹ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹² *I.J.*, 59 ECAB 408 (2008).

¹³ See cases cited *supra* note 11.

Similarly, the diagnostic test results of Dr. Gulekjian and Dr. Silverio regarding appellant's lumbar conditions are insufficient to establish her claim. This evidence predates the May 21, 2008 incident and does not provide any medical opinion addressing causal relation. The reports which contained illegible signatures have no probative value, as it is not established that the authors are physicians.¹⁴

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 21, 2008 employment incident. Appellant did not meet her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a back injury on May 21, 2008, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2010
Washington, DC

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

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

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

¹⁴ See *D.D.*, 57 ECAB 734 (2006); *Merton J. Sills*, 39 ECAB 572, 575 (1988).