United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 10-11**
	)	**Issued: September 9, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Jersey City, 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 September 30, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 1, 2009 denying her claim for compensation. 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 injury while in the performance of duty on December 20, 2008.

FACTUAL HISTORY

On December 22, 2008 appellant, then a 43-year-old mail carrier, filed a traumatic injury claim alleging that on December 20, 2008 she sustained injuries to her scalp, neck and back when she slipped and fell on her back during the performance of her federal duties. The employing establishment challenged the claim on the basis she did not report an incident or afford it the opportunity to investigate. Appellant stopped work on December 22, 2008.

In support of her claim, appellant submitted a December 20, 2008 statement, in which she advised she had slipped and fell while delivering the mail and that she did not require medical treatment. She also provided a December 20, 2008 statement from an unidentified witness who heard her speak with her supervisor about falling on her route and noted that the supervisor told her to go to the medical unit but that appellant declined.

In a December 22, 2008 physical activity status report, Dr. Alka J. Patel, a Board-certified internist, noted a "case date" of December 20, 2008. He diagnosed back strain, shoulder/upper arm strain, cervical strain, contusion of face, scalp, neck and contusion of back. Dr. Patel advised that appellant could return to work that day with restrictions on lifting, pushing and pulling. A December 24, 2008 therapy activity status report from Concentra Medical Centers noted appellant was seen that day and scheduled for physical therapy services December 26, 29 and 31, 2008.

In a January 8, 2009 letter, the Office informed appellant that the evidence was insufficient to establish her claim. Appellant was advised to submit a physician's report with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

In a December 24, 2008 report, Dr. Rafael S. Paz, a Board-certified general surgeon, noted an injury date of December 20, 2008. He provided an assessment of cervical strain and back strain.

In a December 31, 2008 report, Dr. Patel noted an injury date of December 20, 2008. He reported appellant's symptoms were improving and her pain was located on the midline lumbar region and lumbosacral region. An assessment of back strain, cervical strain, shoulder pain and shoulder strain were provided. In reports dated January 13 and 21, 2009, Dr. Patel noted that appellant had been working within the prescribed duty restrictions and her symptoms were exacerbated by activity, movement, pulling or pushing. He continued to assess back pain, back strain and cervical strain. Dr. Patel also provided work restrictions and recommended continued physical therapy.

Physical therapy notes for treatment of back strain dated December 24, 30 and 31, 2008, January 6, 8 and 13, 2009 were also submitted.

By decision dated February 9, 2009, the Office denied appellant's claim. It accepted that the December 20, 2008 incident occurred as alleged; however, there was insufficient medical evidence to relate appellant's diagnosed conditions to the December 20, 2008 incident.

Appellant requested a review of the written record. She submitted three statements from witnesses who indicated appellant fell on her back on black ice while delivering mail on December 20, 2008.

Dr. Patel continued to submit treatment reports on appellant's cervical and lumbar symptoms. In a December 22, 2008 examination report, he noted that on December 20, 2008 appellant stated that she injured her neck when she slipped and fell on her back while delivering mail. Dr. Patel noted that appellant had no head trauma or loss of consciousness and her pain began gradually and was located on midline bilateral lower back, lumbar region and the lateral

aspect of the neck. He presented his examination findings and provided an assessment of back pain, back strain and cervical strain. Physical therapy and modified activity were recommended.

In a February 19, 2009 report, Dr. Joseph G.A. Ibrahim, a Board-certified pain specialist, noted that appellant slipped and fell on ice while delivering mail on December 20, 2008. He noted her medical treatment following the injury, her complaints of continuing neck and low back pain and presented his examination findings. Dr. Ibrahim provided an impression of cervical herniated disc at C3-4, C4-5, and C5-6 and lumbar herniated discs at L4-5 and L5-S1. He recommended appellant continue with physical therapy. Dr. Ibrahim also changed appellant's work restrictions. In a March 5, 2009 report, he provided his examination findings and expanded appellant's diagnoses to include lumbar sprain/strain.

Additional progress reports from Dr. Paz were also received along with physical therapy reports. A February 10, 2009 magnetic resonance imaging (MRI) scan of the cervical spine and February 11, 2009 MRI scan of the lumbar spine were also provided.

By decision dated June 1, 2009, an Office hearing representative affirmed the denial of appellant's claim finding that the medical evidence did not establish that a diagnosed medical condition was causally related to the December 20, 2008 work incident.

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] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and, generally, this can be established only by medical evidence.[4]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical

[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] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q)(ee).

opinion evidence is evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, 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 established incident or factor of employment.[5]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] 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.[8]

ANALYSIS

The Office accepted that on December 20, 2008 appellant fell while delivering mail on her route. The record indicates that appellant reported the incident and claimed injury to her supervisor on the date that it occurred. Thus, the evidence establishes that the incident occurred on December 20, 2008 as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence of record does not contain a rationalized medical opinion from a qualified physician establishing that the work-related slip and fall caused or aggravated her claimed back and neck conditions. Therefore, appellant has failed to satisfy her burden of proof.

Appellant sought treatment for her injuries from Dr. Patel on December 22, 2008. In his December 22, 2008 examination report, Dr. Patel noted that on December 20, 2008 appellant stated that she injured her neck when she slipped and fell on her back while delivering mail. He presented his examination findings and diagnosed back pain, back strain and cervical strain. In subsequent reports, Dr. Patel provided assessments of cervical strain, back strain, shoulder pain and shoulder strain. He indicated that appellant could work with restrictions, but later indicated that her symptoms were exacerbated by certain activities. However, Dr. Patel did not provide his own opinion in which he discussed whether appellant's diagnosed conditions were caused or aggravated by the December 20, 2008 incident. The Board has held that medical evidence that does not offer any opinion regarding an employee's condition is of limited probative value on the issue of causal relationship.[9]

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

[6] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[7] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[8] *Id.*

[9] *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009).

In his medical reports, Dr. Paz noted an injury date of December 20, 2008 and diagnosed back strain and cervical strain. He made no reference to the December 20, 2008 incident or provided any medical opinion as to the cause of her back strain and cervical strain. Dr. Paz's reports are insufficient to establish appellant's claim as he did not provide any history of the December 20, 2008 incident or address how her fall that day caused or contributed to the diagnosed medical conditions.[10]

In his February 19, 2009 report, Dr. Ibrahim provided an accurate history of injury, reported his findings on examination and diagnosed cervical herniated discs and lumbar herniated discs at various levels. In his March 5, 2009 report, he expanded appellant's diagnoses to include lumbar sprain/strain. However, Dr. Ibrahim's opinion is of little probative value as he did not offer a specific opinion on whether appellant's conditions were related to the December 20, 2008 incident.[11] Thus, his reports are insufficient to establish appellant's claim.

Appellant submitted physical therapy reports. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Act, their reports and opinions do not constitute competent medical evidence.[12] Thus, the physical therapy reports appellant submitted are of no probative value. The other medical evidence of record, including the MRI scan reports of the cervical and lumbar spine, do not offer a specific opinion on causal relationship and are of little probative value and insufficient to meet appellant's burden of proof.[13]

Appellant expressed her belief that her neck and back conditions resulted from the accepted employment incident. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[14] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[15] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the work-related incident is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report, which described his symptoms, test results, diagnosis, treatment and the doctor's

[10] *S.E., supra* note 9; *A.D.,* 58 ECAB 149 (2006). *Conard Hightower*, 54 ECAB 796 (2003) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[11] *S.E., supra* note 9.

[12] 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerré R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

[13] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[14] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[15] *Id.*

opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how her claimed condition was caused or aggravated by her employment, she has not met her burden of proof.

On appeal, appellant submitted additional evidence supporting her claim. However, the Board's jurisdiction is limited to the evidence of record that was before the Office at the time it rendered its decision and, consequently, the Board may not consider evidence for the first time on appeal.[16]

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury on December 20, 2008, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated June 1, 2009 is affirmed.

Issued: September 9, 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

[16] 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).