United States Department of Labor
Employees' Compensation Appeals Board

K.W., Appellant	)	
and	)	**Docket No. 10-98**
	)	**Issued: September 10, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Jackson, MS, Employer	)	

Appearances:
David N. Gillis, Esq., for the appellant
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 13, 2009 appellant filed a timely appeal from an April 17, 2009 merit decision of the Office of Workers' Compensation Programs. 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 on May 4, 2007 in the performance of duty.

FACTUAL HISTORY

On May 16, 2007 appellant, a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on May 4, 2007 while pushing a buggy up a ramp, she sustained a burning weakness in her right leg and lower back. She stopped work that same date.

Appellant underwent medical treatment. Dr. R.E. Williams, a radiologist, on May 8, 2007 reported that x-rays of her lumbar spine revealed an "essentially negative study" and that x-rays of her sacrum revealed no abnormality.

Appellant submitted reports (Form CA-17), dated May 8, 17 and 21, 2007, in which Dr. Kevin Hayes, Board-certified in family medicine, diagnosed low back pain that radiated into her right leg. Dr. Hayes stated that this condition is employment related and occurred while appellant was pushing a buggy on a ramp. In a separate report (Form CA-20), also dated May 17, 2007, he again diagnosed low back pain that radiated into her right leg. Dr. Hayes attributed this condition to lifting boxes of mail.[1] On May 24, 2007 he diagnosed lower back pain.

On May 25, 2007 Dr. Thomas McDonald, a Board-certified neurosurgeon, presented findings on examination and diagnosed coccygeal, low back and limb pain.

In a May 30, 2007 note, appellant described the events of May 4, 2007 and explained how this incident caused her condition. She also reviewed her medical history.

Appellant submitted a June 20, 2007 postoperative report, in which Dr. Robert Thompson, Jr., a Board-certified anesthesiologist, diagnosed coccydynia.

By decision dated June 27, 2007, the Office accepted that the identified employment incident occurred as alleged but denied the claim because the medical evidence of record did not demonstrate that this incident caused a medically-diagnosed condition.

On July 5, 2007 Dr. McDonald diagnosed coccygeal pain and referred appellant for treatment at a gastrointestinal clinic. He released [her] from work for 20 days because of "[gastrointestinal] problems."

Appellant submitted a July 5, 2007 report CA-17 form, in which Dr. McDonald diagnosed coccydynia which, he opined, occurred while she was pushing a buggy on a ramp.

On July 12, 2007 Dr. Thompson diagnosed coccydynia.

Appellant submitted a note signed by a nurse practitioner.

On August 21, 2007 Dr. Bryan Givhan, a Board-certified neurosurgeon, reported findings on examination and diagnosed low back strain with facet joint inflammation at the L5-S1 level. He noted in his history that appellant sustained an employment-related back injury in 2004. Dr. Givhan related that she was doing well until, on "May [2007]," while pushing a heavy object at work, she experienced pain in her S1 joint that radiated into her hip, buttock and down her leg.

In an October 25, 2007 note, Dr. Hayes diagnosed back pain and constipation.

Appellant submitted a collection of notes, dated September 6 and 17, October 29, November 12, December 3 and 26, 2007, in which Dr. Wesley Spruill, a Board-certified anesthesiologist, diagnosed back pain, right sacroiliac joint dysfunction and right lower

[1] The Board notes that the Office issued a (Form CA-16). A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989). The CA-16 form issued to appellant authorized examination and was, therefore, properly executed.

extremity radiculopathy. Dr. Spruill also diagnosed an L5-S1 postlaminectomy defect with bulging disc and facet degeneration, epidural fibrosis surrounding the right nerve root and "mild left and moderate right" neural foraminal narrowing. He noted that appellant's pain had been present since 2004. Dr. Spruill opined that she was injured on May 4, 2007 at work when she was pushing a cart up a ramp.

Appellant submitted a January 21, 2008 report in which Dr. Fred Graham, a Board-certified physiatrist, reported findings on examination and diagnosed low back pain and disc disease.

On January 24, 2008 appellant, through her attorney, requested reconsideration. Her attorney submitted a brief in which he argued that the evidence of record was sufficient to establish that her conditions were causally related to the established employment incident.

On February 1, 2008 Dr. Givhan, a Board-certified neurosurgeon, reported findings following a lumbar inter-body fusion. He diagnosed lumbar discogenic back pain.

On April 8, 2008 Dr. Chris Miller, a Board-certified diagnostic radiologist, reported that x-rays of appellant's lumbar spine revealed no abnormality.

On May 8 and August 12, 2008 Dr. Ronald C. Phelps, a Board-certified diagnostic radiologist, reported that x-rays of appellant's spine revealed no abnormality.

In a June 19, 2008 note, Dr. Hayes reviewed appellant's history of injury, noting that appellant had undergone a previous back surgery in 2004. More recently, a May 9, 2007 magnetic resonance imaging (MRI) scan revealed postsurgical changes at L5-S1, including a right laminotomy defect. Dr. Hayes further noted that appellant had undergone an anterior lumbar fusion on February 1, 2008. He concluded that she reinjured her back while pushing a mail buggy on May 5, 2007.

Appellant submitted a June 24, 2008 report, in which Dr. Graham reviewed her history of injury, presented findings on examination and diagnosed failed back syndrome and low back pain. In subsequent reports, dated July 22 and August 19, 2008, Dr. Graham reviewed her history of injury, presented findings on examination and diagnosed low back pain.

By decision dated July 30, 2008, the Office vacated its June 26, 2007 decision, in part and accepted appellant's claim for lumbar strain. It affirmed the remainder of its June 26, 2007 decision because she had not demonstrated the established employment incident caused any other medically diagnosed condition.

In an August 19, 2008 report, Dr. Jason R. Bearden, a Board-certified diagnostic radiologist, related that an MRI scan of appellant's spine revealed no evidence of disc herniation.

Appellant also submitted the results from a December 31, 2008 functional capacity evaluation.

In a January 8, 2009 note, Dr. Givhan reviewed appellant's history of injury and course of treatment. He reported that she injured her back at work in 2004 and underwent a lumbar

discectomy in 2004. Dr. Givhan related that appellant was seen again in 2008 and it was felt that her pain was coming from the disc which had been operated on. He noted that her "final diagnosis is failed back syndrome with chronic low back pain and chronic radiculopathy."

On January 19, 2009 Dr. Graham states:

> "It has come to my attention that there is a question of whether or not [appellant's] current symptoms are related to her previous [w]orkers' [c]ompensation claim of 2004. It is my professional opinion that her current symptoms are all initially related to her complaints dating back to at least [five] years ago. This was treated with dis[c]ectomy and followed in February 2008 by fusion at L5-S1. I do not feel these [two] incidents can be separated. I do, again, feel as though [appellant's] current complaints are related dating back to 2004, if not earlier. I would, therefore, be in support of her current treatment being a [w]orkers' [c]ompensation claim."

In a note, dated January 23, 2009, Dr. Raymond G. Overstreet, a Board-certified psychiatrist, related that appellant was unable to work because of her "increasing depression, anxiety and continuing back pain." He related that in 2005 she was charged with malicious mischief for removing a mailbox, that she believes this criminal case was not properly handled and that her supervisors did not support her throughout the criminal case. As of January 23, 2009, this criminal case had not been resolved and Dr. Overstreet states that appellant is "worried" that she will be fired. He described her symptoms as "tearfulness," anxiety, depression, "difficulty sleeping" and "uncertain[ty] about her future." Dr. Overstreet opines that these conditions disabled her from work for 12 months.

Appellant submitted notes bearing an illegible signature and additional notes signed by a nurse practitioner.

On January 27, 2009 appellant, through her attorney, requested reconsideration. Her attorney submitted a brief in which he argued that the medical evidence of record demonstrated that she sustained "much more than just 'lumbar strain'" during the accepted employing incident. He argued that the medical evidence of record demonstrated that appellant's alleged conditions, including failed back syndrome, chronic low back pain, chronic radiculopathy, stress, tearfulness, anxiety and other emotional conditions were causally related to the May 4, 2007 incident.

By decision dated April 17, 2009, the Office denied modification of its June 30, 2008 decision because the evidence of record did not demonstrate that the established employment incident caused appellant's condition.

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]

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.[7]

ANALYSIS

The Office accepted that the May 4, 2007 employment incident occurred as alleged. It also accepted that appellant sustained lumbar strain, as related to this accepted incident. The record also indicates that she had sustained a prior back injury at work in 2004, which required lumbar fusion.

On appeal, counsel argues that appellant's 2007 claim should also be accepted for additional conditions, including "failed back syndrome," chronic low back pain, chronic radiculopathy and a variety of emotional symptoms, because the medical evidence of record demonstrates these conditions are all causally related to the established May 4, 2007 employment incident. The Board notes initially that she has not formally claimed any emotional conditions resulting from the May 4, 2007 injury and the Office has not issued a decision denying an

[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).

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

emotional condition. Therefore, counsel's allegations on appeal in this regard are not before the Board at this time.

Appellant's burden is to demonstrate the established employment incident caused a lumbar or lower extremity condition, other than the accepted lumbar sprain. Her lay opinion is not relevant[8] because causal relationship is a medical issue that can only be proven by probative medical opinion evidence. The medical opinion evidence of record lacks the requisite reasoning to establish the causal relationship between these additional conditions and the established employment incident. Consequently, the Board finds that appellant has not established that she sustained additional conditions on May 4, 2007, in the performance of duty causally related to her employment.

The notes signed by the nurse practitioner and the notes bearing an illegible signature have no probative value on the issue of causal relationship because they do not constitute competent medical evidence. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered "physicians" under the Act, their reports, notes and opinions do not constitute competent medical evidence.[9]

Furthermore, notes bearing illegible signatures are not competent medical evidence because they cannot be identified as having been prepared by a "physician," as defined by the Act.[10] Thus, this evidence does not establish a causal relationship between the accepted employment incident and the identified additional conditions.

The reports and notes signed by Drs. Bearden, Miller, Phelps, Thompson and Williams have limited probative value on causal relationship because they lack a rationalized opinion explaining how the established employment incident caused the conditions they diagnosed.[11] These physicians all noted diagnoses of appellant's condition, but offered no opinion regarding the cause of the diagnosed conditions. As noted above, 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.[12]

[8] *Gloria J. McPherson*, 51 ECAB 441 (2000).

[9] 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

[10] *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

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

[12] *Supra* note 7.

While Drs. Hayes, McDonald and Spruill note that appellant's condition occurred while pushing a buggy on a ramp or pushing a heavy object at work, such generalized statements do not establish causal relationship because they merely repeat her allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed conditions.

Dr. Givhan and Dr. Graham provided a more extensive history of injury, as both noted that appellant had a prior low back injury, for which appellant underwent lumbar fusion in 2004. Both of these physicians opined that her condition in 2008 was related to the L5-S1 disc fusion she underwent in 2004. They did not explain however what effect the May 4, 2007 injury, the subject of the current appellant, had on her preexisting condition. As such Dr. Givhan's and Dr. Graham's reports are insufficient to establish causal relationship between her failed back syndrome, radiculopathy, coccydynia and the May 4, 2007 injury.

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 the medical evidence contains no reasoned discussion of causal relationship, one that, soundly explains how the established May 4, 2007 employment incident caused or aggravated a firmly diagnosed medical condition, the Board finds that appellant has not established the essential element of causal relationship.

CONCLUSION

The Board finds that appellant has not established that she sustained "failed back syndrome" or any other lumbar or lower extremity condition on May 4, 2007, in the performance of duty causally related to her accepted employment incident.

[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 April 17, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 10, 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