

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

C.T., Appellant)	
)	
and)	Docket No. 10-2354
)	Issued: April 21, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Peekskill, NY, Employer)	
)	

Appearances:
Richard Montesarchio, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 20, 2010 appellant, through her representative, filed a timely appeal from April 27 and August 17, 2010 merit decisions of the Office of Workers' Compensation Programs denying her occupational disease claim.¹ Pursuant to the Federal Employees' Compensation Act² and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.³

¹ By order dated November 15, 2010, the Board exercised its discretion in denying appellant's request for oral argument pursuant to 20 C.F.R. § 501.5(a). Docket No. 10-2354 (issued November 15, 2010).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the issuance of the August 17, 2010 Office decision and on appeal, appellant submitted new evidence. However, the Board is precluded from reviewing evidence which was not before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence, together with a formal written request for reconsideration to the Office, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a back condition in the performance of duty causally related to factors of her federal employment.

FACTUAL HISTORY

On February 6, 2010 appellant, then a 35-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a back condition due to factors of her federal employment. She first became aware of her back condition on January 4, 2010 and first attributed it to her employment on January 5, 2010. Appellant reported that she had back pain once in a while but the pain worsened on January 5, 2010 after lifting a tray of flats. She was not certain as to which claim form to complete and stated that she also filled out a notice of traumatic injury (Form CA-1).⁴ Appellant first reported the back condition to her supervisor on January 5, 2010, was taken to the emergency room, and stopped work that same day. The employing establishment controverted the claim.

On February 27, 2010 the Office requested additional evidence, including a detailed description of the employment activities which contributed to appellant's alleged back condition. It also requested a comprehensive medical report containing a diagnosis, description of her symptoms, the results of examinations and tests and medical rationale explaining how her diagnosed condition was causally related to specific factors of her employment.

Appellant submitted the back page of an Authorization for Examination and/or Treatment Form (CA-16) dated February 2, 2010 by Dr. Octavio F. Delasobera, a surgeon, who stated that appellant was "bending over [and] felt pain in [her] lower back, bilateral." Dr. Delasobera indicated by check mark that there was no history or evidence of a preexisting injury. He indicated by check mark that he believed the condition found was caused or aggravated by the employment activity described. Dr. Delasobera reported that the date of first examination was January 7, 2010 and identified the period of disability from January 6 to February 2, 2010. He advised that appellant was able to resume work on February 3, 2010 and recommended continued treatment.

On March 15, 2010 the Office requested the missing front page of Form CA-16 in order to process appellant's claim. Appellant provided no response.

By decision dated April 27, 2010, the Office denied appellant's occupational disease claim on the grounds that she did not establish that she was injured in the performance of duty because the factual basis of the claim was unclear.

On May 26, 2010 the Office received a request for reconsideration and new evidence. Appellant submitted a medical report dated February 3, 2010 by Dr. Delasobera, who reported that she was treated for a musculoskeletal condition on February 2, 2010. Dr. Delasobera noted

⁴ By decision dated February 25, 2010, appellant's traumatic injury claim was accepted for a lumbar sprain. OWCP File No. xxxxxx624 (issued February 25, 2010).

that appellant was capable of performing her normal activities and could return to work on February 3, 2010.

In a narrative statement dated May 21, 2010, appellant advised that she worked at least eight hours a day, five days a week or more, walking, carrying a heavy bag of mail, lifting, bending and loading trucks of mail. She reiterated that she had a prior back condition, but it was worsened on January 5, 2010 and her pain had been continuous since that date. Appellant reported that she had never injured her back in the past, never had back surgery, never suffered from strains, fractures, dislocation, or other like conditions and had never been treated for arthritis, sciatica or any other back condition.

In a letter to the Office dated July 19, 2010, the employing establishment stated that appellant filed a traumatic injury claim (Form CA-1) “for the same basic injury -- see xxxxxx624, DOI [date of injury] January 5, 2010” that had been accepted. It noted that she had submitted no new evidence and that in her Form CA-2 occupational disease claim the January 4, 2010 date of first awareness that she had a back condition was inconsistent with the January 5, 2010 date of realization that her back pain was causally related to factors of her federal employment.

By decision dated August 17, 2010, the Office hearing representative affirmed the April 27, 2010 decision, finding that the factual and medical evidence was insufficient to establish fact of injury.⁵ The Office found that appellant did not establish a factual basis for her claim because she did not address the weights she carried, how often she carried them or how often she bends or lifts the weights.

LEGAL PRECEDENT

An employee seeking benefits under the Act⁶ 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 timely filed within the applicable time limitation period of the Act, and that an injury⁷ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or

⁵ The Office noted that, even if appellant had established an employment incident, she did not submit sufficient rationalized medical opinion evidence to establish causal relationship. Therefore, appellant did not establish fact of injury.

⁶ 5 U.S.C. §§ 8101-8193.

⁷ The Office’s regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁸ See *Ellen L. Noble*, 55 ECAB 530 (2004); *O.W.*, Docket No. 09-2110 (issued April 22, 2010).

occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical 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 implicated 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.¹⁰

ANALYSIS

The Board finds that appellant failed to meet her burden of proof. In her federal employment as a letter carrier appellant lifted trays of mail and there is no evidence to refute this. She submitted a statement in which identified the factors of employment that she believed caused her condition. In order to establish that she sustained an employment-related injury, appellant must also submit rationalized medical evidence which explains how her back condition was caused or aggravated by the implicated employment factors.¹¹

In a February 2, 2010 attending physician's report, Dr. Delasobera stated that appellant was bending over and felt pain bilaterally in her lower back. He checked a box "yes" indicating that appellant's condition was caused or aggravated by an employment activity. Dr. Delasobera also checked a box "yes" indicating that there was no history or evidence of a preexisting injury. Although the "yes" check marks indicate support for causal relationship, his medical report is insufficient to establish a causal relationship.¹² The Board has held that, when a physician's opinion on causal relationship consists only of a check mark on a form, without more by way of medical rationale, the opinion is of diminished probative value.¹³ Dr. Delasobera did not provide a sufficient medical explanation as to the relationship between appellant's back condition and the implicated employment factors.¹⁴ Thus, appellant failed to meet her burden of proof.

⁹ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989); *D.R.*, Docket No. 09-1723 (issued May 20, 2010).

¹⁰ *O.W.*, *supra* note 8.

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

¹² See *Lucrecia Nielsen*, 42 ECAB 583 (1991); *Lillian Jones*, 34 ECAB 379 (1982) (an opinion on causal relationship which consists only of a physician checking yes to a medical form report question on whether the claimant's disability was related to the history given is of little probative value).

¹³ See *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁴ See *Thomas L. Hogan*, 47 ECAB 323, 328-29 (1996).

In a medical report dated February 3, 2010, Dr. Delasobera indicated that he treated appellant for a musculoskeletal condition on February 2, 2010 and advised that she could return to work that same day as she was able to perform her normal activities. He did not present findings upon treatment or examination and failed to provide a firm medical diagnosis.¹⁵ Dr. Delasobera also failed to address the issue of causal relationship as he did not provide a medical opinion explaining how factors of appellant's federal employment, such as lifting a tray of flats on January 5, 2010, caused or aggravated appellant's back condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁶ Lacking a firm diagnosis and thorough medical rationale on the issue of causal relationship, Dr. Delasobera's report is insufficient to establish that appellant sustained an employment-related injury.

Appellant has the burden to submit a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition, medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed, and medical evidence establishing that the diagnosed condition is causally related to the implicated employment factors. The Board finds that appellant failed to submit sufficient medical evidence establishing a firm diagnosis and causal relationship between her condition and factors of her federal employment. Although the Office informed her of the deficiencies in the evidence, she did not submit sufficient factual and medical evidence to establish her claim.¹⁷ Appellant did not meet her burden of proof to establish that she sustained an employment-related injury.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a back condition in the performance of duty causally related to factors of her federal employment.

¹⁵ See *E.K.*, Docket No. 09-1827 (issued April 21, 2010). See also *Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that a treatment note without a firm diagnosis was of insufficient probative value).

¹⁶ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁷ *O.W.*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the August 17 and April 27, 2010 decisions of the Office of Workers' Compensation Programs are affirmed, as modified.¹⁸

Issued: April 21, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹⁸ The Board notes that the Office issued a September 24, 2010 decision denying appellant's September 14, 2010 request for reconsideration. As this decision was issued after appellant filed her appeal with the Board on September 20, 2010, it is null and void. *See R.T.*, Docket No. 08-408 (issued December 16, 2008); *Douglas E. Billings*, 41 ECAB 880 (1990). *See also* 20 C.F.R. § 501.2(c)(3).