

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

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S.B., Appellant)	
)	
and)	Docket No. 10-2234
)	Issued: August 5, 2011
U.S. POSTAL SERVICE, POST OFFICE, Odessa, FL, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 1, 2010 appellant, through counsel, filed a timely appeal from a June 11, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 to her back and shoulder on November 14, 2009.

FACTUAL HISTORY

On November 18, 2009 appellant, then a 46-year-old rural carrier associate, filed a traumatic injury claim alleging that on November 14, 2009 she felt electric shocks go into her

¹ 5 U.S.C. § 8101 *et seq.*

back and shoulder while pulling mail on light duty. She stopped work that day and has not returned.

A November 16, 2009 disability note from Dr. Rudy Panganiban, Jr., a treating Board-certified physiatrist, found that appellant was totally disabled and recommended a functional capacity evaluation.

OWCP received an unsigned November 23, 2009 report listing Robert LaChar, a physician's assistant and Dr. Panganiban. It provided a diagnosis of myofascial pain syndrome with exacerbations due to an employment injury and exacerbation of lumbar and cervical disc disease following the injury. A history of injury noted cervical degenerative disc disease due to an accident. Appellant related that she recently had an exacerbation of pain due to the lifting of a heavy mailbag. Physical findings included tenderness on palpation of the lumbar paraspinous musculature, a mildly antalgic gait and symmetrical and intact muscle strength.

In a November 23, 2009 duty status report (Form CA-17), Dr. Panganiban noted that the November 14, 2009 injury with a notation "patient *off work*." He obtained a magnetic resonance imaging (MRI) scan and diagnosed lumbar strain/sprain with clinical findings of myofascial pain and sprain/strain. Dr. Panganiban described the injury as occurring while appellant was working light duty helping pull mail down when she experienced shooting electrical pain in the neck, shoulders and back. He checked "yes" to the question of whether the condition was employment related.

In a November 24, 2009 MRI scan, Dr. Eve Mary Jehle, an examining Board-certified radiologist, compared the test results with a prior November 5, 2008 scan. The two scans made similar findings for T12-L1; no significant abnormalities at L3-L4; a very mild disc bulge of questionable significance at L2-L3; very mild bilateral neural foraminal narrowing at L4-L5 and moderate disc bulge and moderate bilateral neural foraminal narrowing at L5-L6. Dr. Jehle noted that the prior MRI scan showed a right-sided annular tear at L5-S1 while the current MRI scan showed a small tear on the left side, which had not been identified in the prior scan.

On December 18, 2009 OWCP received a November 16, 2009 report from Dr. Panganiban, who diagnosed chronic lower back pain. A physical examination revealed intact motor and sensory at C5-T1 and L2-S1 and symmetrical bilateral upper and lower extremities.

By decision dated December 31, 2009, OWCP denied appellant's claim on the grounds that she had not established that she had sustained an injury. It accepted the November 14, 2009 incident but found the medical evidence inadequate on the issue of causal relation.

In a January 7, 2010 letter, appellant's counsel requested a telephonic hearing before OWCP's hearing representative, which was held on April 1, 2010.

In a January 22, 2010 report, Dr. Panganiban stated that appellant sustained bilateral upper and lower extremity dysesthesia/paresthesia due to slipping and falling while removing newspapers from a pallet. He reported that possible sensory neuropathy based on diagnostic studies. Dr. Panganiban noted that appellant complained of pain in the L4-5, L5-S1 lumbar paravertebral region.

In an April 10, 2010 disability note, Dr. Peter Candelora, a treating Board-certified orthopedic surgeon, checked the box that appellant was off work until her next appointment.

By decision dated June 11, 2010, OWCP's hearing representative affirmed the denial of her claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of her claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the 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 or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁵ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements.⁸ The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁹

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

² *Id.*

³ *Bonnie A. Contreras*, 57 ECAB 364 (2006); C.S., Docket No. 08-1585 (issued March 3, 2009).

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *B.F.*, Docket No. 09-60 (issued March 17, 2009).

⁶ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁷ *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3; *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

⁸ *Barbara R. Middleton*, 56 ECAB 634 (2005); C.S., *supra* note 3.

⁹ *H.G.*, 59 ECAB 552 (2008); *Betty J. Smith*, 54 ECAB 174 (2002).

specific employment incident or to specific conditions of employment.¹⁰ 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.¹¹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹² 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.¹³ 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.¹⁴

ANALYSIS

OWCP accepted that an employment incident occurred as alleged on November 14, 2009, when appellant was pulling mail and felt pain in her upper back and shoulder area. The issue is whether she submitted sufficient medical evidence to establish that the employment incident caused an injury. The Board finds that the medical evidence does not provide a rationalized medical opinion addressing how the work-related incident caused or aggravated appellant's shoulder or back conditions or disability caused for work. Therefore, appellant failed to meet her burden of proof.

In support of her claim, appellant submitted an MRI scan, disability slip, duty status report and medical reports from Drs. Panganiban and Candelora. The disability slips from Drs. Panganiban and Candelora and MRI scan are insufficient to establish her claim as the issue of causal relationship was not addressed in the reports.¹⁵

In reports dated November 16, 2009 to January 22, 2010, Dr. Panganiban diagnosed chronic low back pain with bilateral upper and lower extremity dysesthesia/paresthesia. However, he offered no opinion explaining how the diagnosed conditions were related to the employment incident. Medical evidence that does not offer any opinion regarding the cause of

¹⁰ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997); *P.K.*, Docket No. 08-2551 (issued June 2, 2009).

¹² *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006); *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

¹³ *Michael S. Mina*, 57 ECAB 379 (2006); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

¹⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁵ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

an employee's condition is of limited probative value on the issue of causal relationship.¹⁶ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹⁷ Moreover, Dr. Panganiban referenced a prior employment injury in his January 22, 2010 report. Therefore, his medical reports are insufficient to meet appellant's burden of proof.

In a November 23, 2009 duty status report, Dr. Panganiban indicated by check mark that appellant's lumbar strain/sprain, myofascial pain and sprain/strain were work related. His report lacked a clear explanation on the causal connection of her back condition to her lifting boxes of copier paper on June 23, 2009 and failed to support such explanation with medical evidence. Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.¹⁸

An unsigned November 23, 2009 report containing signature blocks for Mr. LaChar, a physician's assistant and Dr. Panganiban is of no probative value, as it is not clear whether a physician under FECA prepared the report. It is well established that medical evidence lacking proper identification is of no probative medical value.¹⁹

An award of compensation may not be based on surmise, conjecture or speculation.²⁰ 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.²¹ The fact that a condition manifests itself or worsens during a period of employment²² or that work activities produce symptoms revelatory of an underlying condition²³ does not raise an inference of causal relationship between a claimed condition and an employment incident.

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

¹⁷ See *Roy L. Humphrey*, 57 ECAB 238 (2005); *Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁸ *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹⁹ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

²⁰ *D.D.*, 57 ECAB 734 (2006); *Paul E. Thams*, 56 ECAB 503 (2005); *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

²¹ *Sandra D. Pruitt*, 57 ECAB 126 (2005); *W.D.*, Docket No. 09-658 (issued October 22, 2009).

²² *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393 (1960).

²³ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155 (1960).

Because appellant has not submitted competent medical opinion evidence containing a reasoned discussion of causal relationship, one that soundly explains how the accepted 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 she sustained an injury in the performance of duty on November 14, 2009, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 11, 2010 is affirmed.

Issued: August 5, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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