United States Department of Labor
Employees' Compensation Appeals Board

D.Z., Appellant	)	
and	)	**Docket No. 11-65**
	)	**Issued: August 2, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Cleveland, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., 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 October 12, 2010 appellant filed a timely appeal from a September 8, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on December 9, 2009.

FACTUAL HISTORY

On December 18, 2009 appellant, then a 29-year-old city carrier, filed a traumatic injury claim alleging that she sustained chest, neck and back injuries on December 9, 2009 while she was making deliveries. She stopped work on December 9, 2009 and returned on

[1] 5 U.S.C. § 8101 *et seq.*

December 23, 2009. Appellant detailed in a December 18, 2009 statement that she experienced faintness, sharp pain through the left part of her upper and middle back, and a sensation that her back or lung was collapsing. The employing establishment controverted the claim on December 31, 2009, contending that the medical evidence did not connect appellant's condition to her employment.[2]

Emergency department records dated December 9, 2009 and signed by Dr. Thomas M. Wido, a Board-certified emergency physician, noted complaints of left chest and back pain, nausea and fatigue as well as a history of upper respiratory infection.

A December 10, 2009 report illegibly signed by a healthcare provider related that appellant was delivering mail on December 9, 2009 when she suddenly experienced chest and back pain. Appellant also sustained sharp pain before work and the previous day. An electrocardiograph (EKG) was negative. The unidentified provider diagnosed chest and back pain and opined that appellant's condition "did not appear [to be] caused by work."[3]

In a December 17, 2009 authorization-for-absence form, Dr. Thomas Kavounas, a chiropractor, recommended four hours of modified desk duty from December 21, 2009 to January 4, 2010 to avoid aggravating appellant's neck and thoracic spine pain.

OWCP informed appellant in a January 12, 2010 letter that the evidence was insufficient and advised her about the evidence needed to establish her claim. No additional medical evidence was received.

By decision dated February 26, 2010, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that the December 9, 2009 work event caused or contributed to a chest, neck or back condition.

In a January 6, 2010 duty status report, Dr. Kavounas diagnosed neck, thoracic and lumbar sprains and released appellant to modified duty effective December 17, 2009. A January 6, 2010 authorization-for-absence form from Dr. Kavounas excused her from work on January 7 and 8, 2010 due to severe spinal pain.

Appellant requested a telephonic hearing, which was held on June 4, 2010.[4] She testified that she served as a city carrier since May 2008 and carried a mailbag weighing up to 40 pounds on her delivery route between five and six times a week. Before December 9, 2009 appellant was asymptomatic. On December 9, 2009 she was walking on her route when she began to feel sharp pains in her neck. Appellant then strained her left side while climbing the steps of a residence and could not finish her shift. She was later advised by her attending physician to refrain from carrying items over 10 pounds because of her spinal injury.

[2] An undated and unsigned statement, likely from appellant's supervisor, noted that she reported similar back symptoms on October 7, 2009.

[3] Along with the signature, a significant portion of the report was not legible.

[4] Appellant later testified at a June 4, 2010 telephonic hearing that she was again off work.

Magnetic resonance imagining (MRI) scan reports dated January 19 and June 22, 2010 from Dr. Bradley A. Blackburn, a Board-certified diagnostic radiologist, exhibited a limited left paracentral T6 disc herniation and inferior C4 end plate spondylosis with alterations of the cervical curvature suggestive of a muscular spasm or strain.[5]

In a September 8, 2010 decision, OWCP's hearing representative affirmed the February 26, 2010 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[6] including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.[7] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[8]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[10]

[5] Dr. Blackburn's August 2 and 19, 2010 radiological reports regarding appellant's chest and lumbar spine were negative. In addition, a June 21, 2010 MRI scan report from Dr. Michael J. Paley, a Board-certified diagnostic radiologist, revealed supraspinatus tendinopathy of the left shoulder.

[6] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[7] *R.C.*, 59 ECAB 427 (2008).

[8] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[9] *T.H.*, 59 ECAB 388 (2008).

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

ANALYSIS

The evidence supports that appellant walked and climbed steps while making her postal deliveries on December 9, 2009. The Board finds, however, that the medical evidence does not establish that this employment incident caused a chest, neck or back condition.

Dr. Wido noted in December 9, 2009 emergency department records that appellant complained of left chest and back pain, nausea and fatigue. In January 19 and June 22, 2010 MRI scan reports, Dr. Blackburn diagnosed a limited left paracentral T6 disc herniation and inferior C4 end plate spondylosis. Other diagnostic reports did not address the cause of any diagnosed condition. As these medical reports did not discuss whether appellant's condition was work related they are insufficient to establish the claim. 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.[11]

The remaining evidence lacks evidentiary weight. A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician.[12] Although a December 10, 2009 report diagnosed appellant with chest and back pain, the signature was illegible. Because it cannot be determined that the person signing the report is a physician as defined in 5 U.S.C. § 8101(2), the report lacks probative medical value.[13]

Appellant also submitted reports from Dr. Kavounas, a chiropractor. In a January 6, 2010 duty status report, Dr. Kavounas assessed neck, thoracic and lumbar sprains. He also provided authorization-for-absence forms dated December 17, 2009 and January 6, 2010. As defined under FECA, however, a "physician" includes a chiropractor only to the extent that his reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[14] Since Dr. Kavounas did not diagnose or treat spinal subluxation, he is not a physician for FECA purposes.

Appellant contends on appeal that the September 8, 2010 decision was contrary to fact and law. As noted, the medical evidence did not explain how the December 9, 2009 employment incident caused or aggravated the purported injury. In the absence of well-reasoned medical opinion explaining this relationship, appellant failed to meet her burden.

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[11] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009). Neither physician identified the accepted December 9, 2009 work event. *See John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition).

[12] *See Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

[13] *R.M.*, 59 ECAB 690, 693 (2008). The Board also notes that the December 10, 2009 report did not support causal relationship.

[14] 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988). Subluxation means an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays. 20 C.F.R. § 10.5(bb).

The Board points out that appellant submitted new evidence after issuance of the September 8, 2010 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.[15] However, appellant may submit new evidence or argument as part of a formal written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 (a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish that she sustained a traumatic injury in the performance of duty on December 9, 2009.

ORDER

IT IS HEREBY ORDERED THAT the September 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 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

[15] 20 C.F.R. § 501.2(c).