United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 11-1034**
	)	**Issued: December 12, 2011**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Raleigh, NC, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 22, 2011 appellant, through her attorney, filed a timely appeal from a January 18, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 May 24, 2009.

FACTUAL HISTORY

On October 1, 2009 appellant, then a 35-year-old mail processing clerk, filed a traumatic injury claim alleging that she was bending over to sweep mail at a delivery bar code sorter on

[1] 5 U.S.C. § 8101 *et seq.*

May 24, 2009 when she stood up and felt sharp back pain. She did not incur any lost time from work. The employing establishment controverted the claim on the grounds that appellant had stated that she did not know if her injury was job related, previously fell out of a chair and was involved in a motor vehicle accident sometime between May 24 and October 1, 2009.[2]

In an October 7, 2009 letter, OWCP informed appellant that additional evidence was needed to establish her claim. It gave her 30 days to submit medical reports from a physician explaining how the May 24, 2009 employment incident was causally related to her condition.

Appellant specified in a November 4, 2009 statement that she originally notified management about her injury on May 24 and 29, 2009. Her supervisor later remarked, "I [a]m going to have to write you up if you want to fill out the paperwork." Appellant denied having any preexisting condition.

In an October 7, 2009 duty status report, Dr. Ansha R. Alexander, a Board-certified internist, obtained appellant's account that she sustained back pain on May 24, 2009 due to "bending over" and "repetitive motion sweeping" at work. She observed pain on palpation of the lumbar region. Dr. Alexander diagnosed lower back pain and degenerative disc disease and released appellant to light-duty work effective September 18, 2009.

A report signed by Dr. Alexander on October 30, 2009 indicated that appellant experienced work-induced back pain that radiated to her left leg and shoulders and diagnosed back pain and generalized myalgias.

By decision dated November 19, 2009, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that the accepted May 24, 2009 employment incident caused or contributed to a diagnosed medical condition.

Appellant's counsel requested reconsideration on November 16, 2010 and submitted additional medical evidence. In an August 4, 2009 report, Dr. Alexander noted that appellant was recently involved in a motor vehicle collision, which aggravated her lower back pain. She observed a positive straight leg raise test and trace bilateral patellar reflexes on examination while a lumbar x-ray did not reveal any abnormalities. Dr. Alexander assessed back pain.

An August 10, 2009 magnetic resonance imaging (MRI) scan obtained by Dr. Lelan F. Whitmire, a Board-certified diagnostic radiologist, exhibited a small L5-S1 posterior central disc bulge.

In a September 18, 2009 report, Dr. Alexander mentioned that appellant carried up to 70 pounds of mail as part of her employment duties. She observed lower lumbar and right paralumbar discomfort on palpation. After reviewing the results of the August 10, 2009 MRI scan, Dr. Alexander diagnosed back pain with a mild lumbar disc bulge and opined, "[Appellant] may have some musculoskeletal pain since her job requires her to lift heavy objects." She advised light duty "until we get some better etiology and treatment for [appellant's] back pain."

[2] In an October 2, 2009 letter, the employing establishment added that appellant first filed for unpaid leave under the Family and Medical Leave Act, but was denied.

A September 21, 2009 treatment record signed by a physical therapist pointed out that appellant's job required significant bending, squatting, lifting and rotation.

In an October 28, 2009 report, Dr. Alexander related that appellant sustained a lower back injury at work. She recommended continuing light duty as "[i]t was felt that [appellant's] pain was purely muscular in etiology and exacerbated by her lifting at work."

Dr. Karlus C. Artis, a general practitioner, stated in a November 10, 2010 medical form that appellant felt sudden back pain while bending and lifting at work. He observed lumbosacral tenderness on palpation and noted the prior MRI scan results. Dr. Artis diagnosed herniated disc and lumbago and concluded that appellant's history suggested a work-related lumbosacral injury.

On January 18, 2011 OWCP modified the November 19, 2009 decision to find that appellant did not sufficiently establish that she experienced an employment incident on May 24, 2009 as alleged.

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,[3] including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.[4] 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.[5]

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.[6]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[7] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury,

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

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

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

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

[7] *Gregory J. Reser*, 57 ECAB 277 (2005); *R.T.*, Docket No. 08-408 (issued December 16, 2008).

continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[8]

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.[9]

ANALYSIS

Appellant alleged that she bent over to sweep mail on May 24, 2009 and experienced back pain when she stood up. As noted, an employee's statement that an incident occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. Appellant's allegation that she bent over to sweep mail on May 24, 2009 is not disputed by any evidence of record. This factual account of the incident was also consistent with the health histories obtained by Drs. Alexander and Artis.[10] Appellant has established that the incident occurred as alleged. The Board finds, however, that she failed to establish her claim as the medical evidence did not sufficiently demonstrate that the accepted May 24, 2009 work event caused or contributed to her lower back condition. Therefore, appellant has not established fact of injury.

Dr. Alexander initially noted in an August 4, 2009 report that a motor vehicle collision aggravated appellant's lower back pain. She then mentioned in a September 18, 2009 report that musculoskeletal pain may have resulted from carrying up to 70 pounds of mail and other heavy objects on the job.[11] In an October 7, 2009 duty status report, Dr. Alexander attributed appellant's condition to bending and repetitive sweeping at work on May 24, 2009. She subsequently maintained that the injury was work related in October 28 and 30, 2009 reports. Dr. Alexander, however, did not sufficiently establish causal relationship because she failed to explain how bending and sweeping pathophysiologically caused appellant's lower back

[8] *Betty J. Smith*, 54 ECAB 174 (2002).

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

[10] *See Caroline Thomas*, 51 ECAB 451. The Board also notes that OWCP previously accepted that this employment incident occurred in its November 19, 2009 decision, but subsequently modified the finding in the January 18, 2011 decision.

[11] *See John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to the diagnosed medical condition). *See also M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

condition.[12] The need for such rationale is particularly important here since appellant was involved in a car accident before she filed a traumatic injury claim.

Dr. Artis concluded in a November 10, 2010 medical form that appellant sustained lumbago and herniated disc due to bending and lifting at work. Nevertheless, his opinion lacked fortifying medical rationale and thus offered limited probative value on the issue of causal relationship.[13]

The remaining medical reports were also inadequate to establish the claim. Dr. Whitmire's August 10, 2009 MRI scan report was of diminished probative value because the physician did not address whether appellant's federal employment caused or contributed to her lower back injury.[14] Finally, because a physical therapist is not a "physician" as defined under FECA, the September 21, 2009 treatment record cannot constitute competent medical evidence.[15] In the absence of rationalized medical opinion evidence, appellant failed to meet her burden.

Appellant's counsel contends on appeal that the decision was contrary to fact and law. As noted, the medical evidence was insufficient to establish that the accepted May 24, 2009 employment incident was causally related to her lower back condition.

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 May 24, 2009.

[12] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[13] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954). The Board points out that Dr. Artis' opinion suggested that appellant's condition developed over a period of time rather than during a single workday or shift, which was more consistent with a claim for occupational disease. *See* 20 C.F.R. § 10.5(q) & (ee).

[14] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[15] 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2011 decision of the Office of Workers' Compensation Programs be affirmed, as modified.

Issued: December 12, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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