United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 10-1006**
	)	**Issued: January 14, 2011**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION FACILITY, Medford, OR, 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 March 1, 2010 appellant filed a timely appeal from a February 1, 2010 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 met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on May 25, 2009.

FACTUAL HISTORY

On June 24, 2009 appellant, then a 54-year-old casual mail clerk, filed a traumatic injury claim alleging that she sustained a pinched nerve and symptoms in her left hip and leg. She stated that she was pushing, twisting and lifting at work on May 25, 2009 and woke up the following morning with left leg cramps. Appellant stopped work on May 26, 2009 and received medical treatment on May 29, 2009. She subsequently resigned.

In a June 23, 2009 letter, appellant's supervisor recalled that, on or around May 26, 2009, appellant notified him of back pain related to her sciatic nerve and requested light-duty work until she moved to Bend, Oregon, where she was attempting to transfer to another employing establishment processing facility. When told that no such work was available, appellant asked if she should turn in her "papers." The supervisor offered appellant a resignation form, which she voluntarily completed and submitted to him. When he asked appellant whether she injured herself on the job, she replied, "No, I hurt it at home, packing up my stuff, for the move to Bend." The supervisor denied telling appellant that she was required to resign or that "plenty of work" was available.

In a July 8, 2009 letter controverting the claim, the employing establishment pointed out that appellant's resignation was effective June 1, 2009, that she did not file her claim until June 24, 2009, and that no medical evidence was received on causal relationship.

In a July 9, 2009 letter, the Office informed appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit additional evidence to establish her claim.

In a July 8, 2009 report, Dr. Kevin A. Rueter, a Board-certified family practitioner, noted that appellant complained of posterior lateral pain in the left hip and leg for approximately two months and was "injured working at the post office." He added that appellant experienced pain after a graveyard shift at the end of May 2009, which worsened when she awoke the next day and hindered her ability to walk. Appellant mentioned that she had seen a medical provider before and was told that she might have sciatica. On examination, she had tenderness to palpation and decreased range of motion eliciting pain on palpation of the lateral joint and posterior joint line over the sciatic notch. Dr. Rueter diagnosed joint pain involving the pelvic region and thigh probably due to a repetitive motion injury versus osteoarthritis, dislocation or relocation.

In a July 17, 2009 report, Dr. Rueter recalled seeing appellant on July 8, 2009 for an injury that she sustained in late May. He advised that she related a nonspecific injury to her left hip that caused extreme pain when she awoke the next day and was referred to orthopedics and physical therapy. Dr. Rueter stated that "the timing of her pain suggests that the injury may have occurred at work." He attached a July 8, 2009 x-ray report from Dr. Robert E. Hogan, a Board-certified diagnostic radiologist, noting mild degenerative joint disease of the left hip and no acute injury.

A July 22, 2009 physical therapy report signed by Dr. Rueter noted that appellant was evaluated on July 16, 2009 for symptoms of left hip and leg discomfort that arose while working on May 25, 2009. Dr. Rueter diagnosed left low back and buttock pain, detailing gait dysfunction and reductions in dorsiflexion, strength to the left hip flexors and knee extensors, and sensory response to the left lateral leg and in L5-S1 distribution.

In a July 16, 2009 statement, appellant related that, on the night of May 25, 2009, due to understaffing, she was working on a flat sorter at the employing establishment. Around 3 a.m., she felt pain in her left hip and limped a little bit as she was pushing a container of mail. Appellant finished her shift and returned home to sleep, but woke up that afternoon with

"horrible sharp pains and leg cramps." On May 29, 2009 she sought medical treatment and was taken off work for three days. On June 1, 2009 appellant returned to work, notified her supervisor about a possible pinched nerve and requested other work. Her supervisor informed her there was only 10 minutes of work and that she "had to sign a resignation form." Appellant initially refused, but relented when her supervisor told her that she was required to resign. She noted that a coworker observed the exchange. Appellant denied having a prior condition or telling her supervisor that she sustained the injury while packing at home.

Appellant also submitted a July 14, 2009 statement from George Seela, her partner, who affirmed that on the afternoon of May 26, 2009 she awoke with pain and visited a physician on May 29, 2009. Mr. Seela advised that appellant was not involved with the moving preparations. In a May 29, 2009 work release, a nurse practitioner stated that appellant needed to be off work for three more days.

By decision dated August 10, 2009, the Office denied appellant's claim, finding that the medical evidence was not sufficient to show that she sustained an injury due to the work incident.

Appellant requested a telephonic oral hearing on August 20, 2009. She submitted an October 23, 2009 report from Dr. Stephen L. Nelson, a Board-certified family practitioner, who obtained a history that on May 25, 2009 appellant was pushing equipment without assistance at the employing establishment and experienced soreness after it was caught on a rubber floor mat. Appellant was unable to walk the next day. Dr. Nelson diagnosed left lumbar radiculopathy at L4-L5. Appellant also submitted August 2009 physical therapy records.

At the November 10, 2009 hearing, Mr. Seela testified regarding his observation of appellant since May 26, 2009. The hearing representative requested that appellant submit a medical report from a physician describing the history of her claimed injury on May 25, 2009, a definitive diagnosis, and how the reported work-related incident caused or contributed to the diagnosed condition.

Appellant submitted an undated statement regarding the May 25, 2009 incident, reiterating that she worked the graveyard shift that night, was pushing and pulling a container when she sustained hip pain. She woke up the following afternoon with leg cramps and stiffness and notified her supervisor about her condition on June 1, 2009. Appellant added that the wheels of the container became caught on a rubber floor mat.

In an October 30, 2009 form report, Dr. Rueter commented that he saw appellant on July 8, 2009 for left hip pain, found pain with palpation of the posterior hip and diagnosed "pain in joint pelvis/thigh." Appellant had no prior history or preexisting condition. Dr. Rueter noted that the condition was work related and answered "Yes" to a form question asking for his "opinion as to causal relationship between history of injury and diagnosis."

A November 3, 2009 x-ray report of appellant's pelvis from Dr. Laurie A. Martin, a Board-certified diagnostic radiologist, revealed mild degenerative changes of the sacroiliac joints and small osteochondroma along the right anterior iliac crest.

In a December 8, 2009 report, Dr. Nelson advised that appellant sustained a low back injury at work on May 25, 2009. He noted that she had worked at the employing establishment for many years and that her job entailed pushing equipment around. Dr. Nelson stated that, over the years, this is taken a toll on her back to the point that she has required chiropractic treatment to keep working. On May 25, 2009 he reported that appellant was working alone and that "the equipment got caught on a rubber mat and she twisted her back" and had significant low back pain radiating down her left leg. Dr. Nelson stated that the pain had persisted since that time and rendered her unable to work. In another December 8, 2009 report, he advised that he was treating appellant for lumbar radiculopathy and listed her work restrictions.

By decision dated February 1, 2010, the hearing representative denied appellant's claim finding that the reports from Drs. Rueter and Nelson were insufficient to establish that her diagnosed condition was due to the May 25, 2009 work incident.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[2] including that she is an "employee" within the meaning of the Act and that she filed her claim within the applicable time limitation.[3] 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.[4]

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.[5]

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

[1] 5 U.S.C. §§ 8101-8193.

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

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

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

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

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

ANALYSIS

The evidence supports that appellant was pushing a mail container at the employing establishment on May 25, 2009. The Board finds that she has not submitted sufficient medical evidence to establish a low back, left hip or leg condition caused or aggravated by this work-related incident.

Dr. Nelson's October 23 and December 8, 2009 reports stated that appellant sustained left lumbar radiculopathy as a result of twisting her back after pushing an OTR caught on a rubber floor mat on May 25, 2009. In the December 8, 2009 report, Dr. Nelson commented that appellant had pushed equipment for years and that the activity had taken a toll on her back such that she needed chiropractic treatment to keep working." Although Dr. Nelson opined that appellant's diagnosed left lumbar radiculopathy was related to the May 25, 2009 incident, he did not offer sufficient medical rationale explaining how pushing a mail container caused or aggravated her condition. Medical reports not containing rationale on causal relation are of diminished probative value and generally insufficient to meet an employee's burden of proof.[7] The need for rationalized medical opinion evidence regarding causal relationship was particularly important in this case where two x-ray reports from July 8 and November 3, 2009 suggested that appellant had mild degenerative joint disease in the pelvic region. Dr. Nelson noted that appellant had a prior history of chiropractic treatment for her back, which conflicted with her prior statement that she did not have any preexisting condition before the May 25, 2009 incident. Medical opinions based on an incomplete or inaccurate history are also of diminished probative value.[8]

Similarly, Dr. Rueter did not provide a fully-rationalized medical opinion as to causal relationship. His July 8, 2009 report noted that appellant experienced pain after a graveyard shift at the end of May 2009 due to "probable repetitive motion injury" as opposed to osteoarthritis or dislocation not a medical diagnosis.[9] Dr. Rueter did not offer sufficient medical reasoning addressing how appellant's employment caused or aggravated her condition. His finding that the condition was attributable to "probable repetitive motion injury" is speculative[10] and failed to address the May 25, 2009 incident described by appellant, namely the mail container pushing.[11] The fact that appellant's condition became apparent during a period of employment does not

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

[7] *S.S.*, 59 ECAB 315, 322 (2008); *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

[8] *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980).

[9] *Robert Broome*, 55 ECAB 339, 342 (2004).

[10] *Kathy A. Kelley*, 55 ECAB 206, 211 (2004) (the use of speculative terms diminishes the probative value of medical opinion evidence).

[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 diagnosed medical condition).

establish causation.[12] On July 17, 2009 Dr. Rueter opined that "the timing of appellant's pain suggests that the injury may have occurred at work" while in his October 30, 2009 report he answered "Yes" to a form question asking whether her injury was causally related to her employment. These reports also fail to offer sufficient medical reasoning explaining the pathophysiological process by which pushing an OTR on May 25, 2009 caused or aggravated appellant's condition.[13] Dr. Rueter did not provide an unequivocal opinion explaining the reasons why the May 25, 2009 incident caused or aggravated a diagnosed medical condition.[14]

Other medical reports of record are insufficient to establish the claim because they do not specifically address whether appellant's work activities on May 25, 2009 caused or aggravated a diagnosed medical condition.[15]

Appellant argues on appeal that the Office's decision was contrary to fact and law. As stated above, the medical evidence did not sufficiently explain how pushing an OTR at work on May 25, 2009 caused or contributed to appellant's condition.

CONCLUSION

The Board finds that appellant did not establish that she sustained a traumatic injury in the performance of duty on May 25, 2009.

[12] *Robert G. Morris*, 48 ECAB 238, 239 (1996).

[13] *See Alberta S. Williamson*, 47 ECAB 569 (1996) (an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value).

[14] Drs. Rueter and Nelson also indicate that appellant's condition occurred over time. The Board notes the matter on appeal involves a claim for a traumatic injury; whether appellant sustained an injury on May 25, 2009 and not whether she sustained a condition over a period of time. *See* 20 C.F.R. § 10.5(ee) (defines a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift); 20 C.F.R. § 10.5(q) (defines an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift).

[15] *J.F.*, 61 ECAB ___ (Docket No. 09-1061, issued November 17, 2009) (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).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 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