

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

R.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Wichita, KS, Employer**

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**Docket No. 10-1130
Issued: January 18, 2011**

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, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 12, 2010 appellant filed a timely appeal from a December 29, 2009 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.

ISSUES

The issues are: (1) whether appellant established she sustained degenerative disc disease causally related to her June 13, 2008 employment injury; and (2) whether appellant established she sustained recurrence of disability on September 22, 2008, causally related to her accepted employment injury.

FACTUAL HISTORY

On June 13, 2008 appellant, a 49-year-old clerk, sustained a lumbar sprain after opening an improperly locked all-purpose carrier (APC). She had to jump back to keep materials from falling on her. The record indicates that appellant has preexisting degenerative disc disease.

On June 17, 2009 appellant claimed a recurrence of disability beginning September 22, 2008. She stopped work on April 17, 2009 and claimed wage-loss compensation from June 17 through July 30, 2009 for 156 hours of leave without pay. Appellant also sought wage-loss compensation for nightly differential from April 17 through September 4, 2009.

In support of appellant's recurrence claim, on June 5, 2009 Dr. Kris Lewonowski, a Board-certified orthopedic surgeon, reviewed her medical history, presented findings on examination and diagnosed L5-S1 degenerative disc disease. He also diagnosed L4-5 degenerative disc disease and a leak. Dr. Lewonowski asserted that in all medical probability appellant's June 13, 2008 employment injury exacerbated her preexisting degenerative disc disease. He stated that appellant most likely had routine or age-related changes but now had tears of the annulus at L4-5 and L5-S1 with discographic evidence of leakage. Dr. Lewonowski opined that these conditions are never a common finding in age-related degenerative disc disease cases. Rather, he opined that these conditions implied a trauma or twisting injury.

On June 13, 2008 Dr. Jon Kirkpatrick, an orthopedic surgeon, presented findings on examination and diagnosed lumbar-spine degenerative disc disease and low back pain. He also provided work restrictions.

By decision dated August 6, 2009, the Office denied appellant's wage-loss claims because the evidence of record did not demonstrate her degenerative disc disease was causally related to accepted employment injury or that her accepted employment injury caused total disability during the periods claimed.

On August 13, 2009 appellant, through her attorney, requested an oral hearing.

By decision dated September 15, 2009, the Office denied appellant's recurrence claim because the evidence of record did not demonstrate that, on September 22, 2008, she sustained a recurrence of the accepted medical condition or that she was totally disabled due to the accepted employment injury.

An oral hearing was held on November 4, 2009 at which appellant and her attorney were present. Appellant described the June 13, 2008 incident and her medical treatment. She discussed her degenerative disc disease.

By decision dated December 29, 2009, an Office hearing representative affirmed both the August 6 and September 15, 2009 decisions because the evidence of record did not demonstrate appellant's degenerative disc disease was causally related to her accepted employment injury and she had not established a recurrence of her accepted injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,²

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

including that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³ As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion 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 compensable 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.⁶

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a lumbar sprain as a result of the June 13, 2008 incident during which she had to jump backwards to keep materials from falling on her while opening an improperly locked APC. Appellant alleged an aggravation of her degenerative disc disease as a result of this incident. Her burden is to establish that this employment incident caused an aggravation of her degenerative disc disease. Causal relationship is a medical issue that can only be established by probative medical opinion evidence.⁷ The Board finds the medical opinion evidence of record insufficient to establish the required causal relationship.

Dr. Lewonowski diagnosed degenerative disc disease at the L4-5 and L5-S1 levels. He advised that appellant "most likely" had routine or age-related degenerative changes that were exacerbated by her June 13, 2008 employment injury which produced tears of the annulus at L4-5 and L5-S1 levels with discographic evidence of leakage. Dr. Lewonowski opined that such conditions were never common in age-related cases; rather they implied a trauma or twisting injury. The Board finds that he did not address any history of appellant's degenerative disease or the specifics of her June 13, 2008 employment incident. Dr. Lewonowski did not explain how appellant's jump backwards would constitute a type of trauma or twisting injury adequate to aggravate appellant's preexisting condition. Use of the terms "most likely" and "implied" renders the physician's opinion as speculative and equivocal and, thus, of diminished probative

³ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁶ *I.J.*, 59 ECAB 498 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *See Steven S. Saleh*, 55 ECAB 169 (2003).

value.⁸ Dr. Lewonowski did not adequately address the issue of aggravation of appellant's degenerative disease.

Dr. Kirkpatrick diagnosed lumbar spine degenerative disc disease and low back pain. His report is of diminished probative value. Dr. Kirkpatrick did not provide any opinion explaining how the established employment incident caused the diagnosed conditions.⁹

An award of compensation may not be based on surmise, conjecture or speculation.¹⁰ 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.¹¹ The fact that a condition manifests itself or worsens during a period of employment¹² or that work activities produce symptoms revelatory of an underlying condition¹³ does not raise an inference of causal relationship between a claimed condition and an established employment incident.

Appellant has not submitted medical opinion evidence containing a reasoned discussion of causal relationship, one that soundly explains how the established employment incident caused or aggravated her alleged degenerative disc disease condition. The Board finds that she has not established the essential element of causal relationship.

LEGAL PRECEDENT -- ISSUE 2

A recurrence of disability means "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."¹⁴ A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and

⁸ *Cecelia M. Corley*, 56 ECAB 662 (2005).

⁹ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

¹⁰ *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

¹¹ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹² *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

¹³ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

¹⁴ *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

supports that conclusion with sound medical reasoning.¹⁵ Where no such rationale is present, medical evidence is of diminished probative value.¹⁶

ANALYSIS -- ISSUE 2

The Office accepted that appellant sustained lumbar sprain as a result of the June 13, 2008 incident. Appellant returned to full-duty work. The issue is whether she established she sustained a recurrence of disability on September 22, 2008, causally related to her accepted employment injury. Causal relationship is a medical issue that can only be proven by probative medical opinion evidence which demonstrates just that. Appellant has failed to submit sufficient probative medical evidence containing a rationalized opinion which relates her claimed recurrence of disability to her accepted employment injury, lumbar sprain.¹⁷ Consequently, she has not discharged her burden of proof to establish her claim that she sustained a recurrence of disability as a result of her accepted employment condition.

Dr. Lewonowski diagnosed degenerative disc disease at the L4-5 and L5-S1 levels. He did not explain how appellant's degenerative disc disease or annulus tears represented a spontaneous change in her accepted lumbar sprain. Dr. Lewonowski attempted to relate these conditions to the June 13, 2008 employment incident, but lacking medical rationale based upon a proper factual background, as previously discussed, his opinion is not sufficient to establish that the accepted sprain contributed to the degenerative disease or annulus tear. His opinion is insufficient to discharge appellant's burden of proof.

Dr. Kirkpatrick diagnosed lumbar-spine degenerative disc disease and low back pain. As noted, he provided no opinion explaining how these conditions represented a spontaneous change in appellant's accepted employment injury.

An award of benefits may not be based on surmise, conjecture, speculation or upon a claimant's own belief that there is causal relationship between her claimed condition and her accepted employment injury.¹⁸

CONCLUSION

The Board finds that appellant has not established she sustained degenerative disc disease in the performance of duty on June 13, 2008, causally related to her employment. The Board further finds that she has not established she sustained a recurrence of disability on September 22, 2008, causally related to her accepted employment injury.

¹⁵ *I.J.*, *supra* note 6; *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

¹⁶ *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

¹⁷ Appellant submitted a report (Form CA-17) bearing an illegible signature, which lacks probative value on the issue of causal relationship and is insufficient to satisfy her burden of proof because its author cannot be identified as a physician for purposes of the Act. 5 U.S.C. § 8101(2). *See R.M.*, 59 ECAB 690 (2008); *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁸ *S.S.*, 59 ECAB 315 (2008); *Paul E. Thams*, 56 ECAB 503 (2005).

ORDER

IT IS HEREBY ORDERED THAT the December 29 and September 15, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 18, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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