United States Department of Labor
Employees' Compensation Appeals Board

J.K., Appellant	)	
and	)	**Docket No. 10-1524**
	)	**Issued: March 4, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Ravenna, 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 May 18, 2010 appellant, through her attorney, filed a timely appeal from the April 13, 2010 merit decision of the Office of Workers' Compensation Programs denying her claim for an employment-related injury. 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 her low back condition is causally related to a July 6, 2009 employment incident.

On appeal, appellant's attorney contends that the April 13, 2010 Office decision was contrary to fact and law.

FACTUAL HISTORY

On July 18, 2009 appellant, then a 27-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 6, 2009 she sustained a low back injury while in the performance of duty. Her mailbag was heavier than usual because it was the day after a holiday

and she injured her low back when it "suddenly gave out" and she was unable to twist or turn. Appellant stopped work that day.

In a July 27, 2009 report, Dr. Bina Mehta, a Board-certified physiatrist, reported that she had seen appellant in the spring with severe pain in the lumbar area. She noted that appellant's condition improved and appellant did not obtain a lumbar magnetic resonance imaging (MRI) scan they had discussed. Dr. Mehta diagnosed appellant with lumbar sprain and strain (847.2) and limited appellant's work activity to two hours of walking and four hours of mounted mail delivery.

On August 17, 2009 the Office administratively accepted appellant's claim as a "quick close case" and authorized up to $1,500.00 in medical care and treatment. It requested additional factual and medical information from her. The Office allotted appellant 30 days to submit additional evidence and respond to its inquiries.

By decision dated September 23, 2009, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish a back condition related to the incident at work.

On October 5, 2009 appellant requested an oral hearing, by telephone. In a September 28, 2009 report, Dr. Mehta advised that appellant went on a cruise vacation on September 14, 2009 and had a seizure while on the beach. She indicated that appellant fell and received 10 stitches in her forehead and was taking Dilantin. Dr. Mehta diagnosed lumbar sprain and strain. In an August 17, 2009 progress report, she reported that appellant's back pain had improved after a severe increase for a few days due to sneezing and noted that they were awaiting authorization of a lumbar MRI scan.

In an October 27, 2009 report, Dr. Mehta stated that appellant was still experiencing back pain, which continued to be more severe when she sneezed. She reported that appellant's lumbar MRI scan revealed multilevel facet hypertrophy with a disc bulge at L4.

On December 11, 2009 the Office scheduled a telephonic hearing for January 12, 2010.

In a November 30, 2009 report, Dr. Mehta stated that appellant's back condition had improved, but her pain was "never less than a 7/10" on the analog pain scale. She indicated that appellant's pain was excruciating on some days and that driving her mail truck, hitting potholes and carrying heavy bags triggered pain. Dr. Mehta reported that appellant's neurologist "did not feel that she had a seizure and that she actually had heat stroke" on September 14, 2009. She diagnosed lumbar sprain and strain (847.2), lumbosac spondylosis without myelopathy (721.3) and displacement of a lumbar disc without myelopathy (722.10). A January 11, 2010 progress report noted that appellant's back condition was "about the same," her pain medications "were doing fine" and that appellant did not take them while at work.

On January 12, 2010 an Office hearing representative conducted a telephonic hearing and granted appellant's request to hold the record open for 30 days to submit additional medical evidence. Appellant resubmitted reports dated July to October 2009, from Dr. Mehta that were previously of record.

By decision dated April 13, 2010, the Office denied appellant's claim on the grounds that she failed to submit sufficient medical evidence to establish causal relationship. It found that she had a preexisting medical condition affecting the lower back prior to the July 6, 2009 employment incident. The Office found that appellant did not submit sufficient medical opinion evidence to establish that the July 6, 2009 work incident aggravated her low back condition.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury[2] was sustained in the performance of duty, as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[3]

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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[4]

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.[5]

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[1] 5 U.S.C. §§ 8101-8193.

[2] The Office's regulations define 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[3] *T.H.*, 59 ECAB 388 (2008). *See Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Id. Shirley A. Temple*, 48 ECAB 404 (1997); *see John J. Carlone*, 41 ECAB 354 (1989).

[5] *Id. See Gary J. Watling*, 52 ECAB 278 (2001).

ANALYSIS

The Office has accepted that the employment incident of July 6, 2009 occurred at the time, place and in the manner alleged. The issue is whether appellant sustained a low back injury resulted from the July 6, 2009 employment incident. The Board finds that she did not meet her burden of proof to establish a causal relationship between her lumber condition and the July 6, 2009 employment incident.

In a July 27, 2009 medical report, Dr. Mehta diagnosed appellant with lumbar sprain and strain and placed restrictions on appellant's employment activities. She advised that appellant had previously been treated in the spring for a lumber condition. Dr. Mehta related that on July 6, 2009 appellant's mailbag was heavier than usual and appellant felt pain across the lumber area. In an August 17, 2009 medical report, she noted that appellant's back pain had improved after sneezing incidents ceased. In an October 27, 2009 progress note, Dr. Mehta reported that appellant's lumbar MRI scan showed multilevel facet hypertrophy and a disc bulge at L4 and that appellant still experienced back pain. The Board has held that 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.[6] These reports are insufficient to meet appellant's burden of proof to establish causal relationship between her low back condition and the July 6, 2009 employment incident. Dr. Mehta did not address how carrying a mailbag was competent to cause or contribute to appellant's low back condition,

In a November 30, 2009 report, Dr. Mehta reported that appellant's back condition had improved, but her pain was never less than a 7 on a 10-point pain scale. She diagnosed lumbar sprain and strain, lumbosac spondylosis without myelopathy and displacement of a lumbar disc without myelopathy. Dr. Mehta indicated that driving a mail truck, hitting potholes and carrying heavy bags triggered appellant's pain. Although she provided a firm diagnosis, she failed to adequately address the issue of causal relationship. Dr. Mehta did not explain how the mechanism of the July 6, 2009 employment incident aggravated appellant's back condition. Rather, she addressed causal relation in terms of other employment duties. Moreover, Dr. Mehta noted that appellant had a seizure while on vacation but did not address how this related to appellant's low back symptoms. Her reports are not sufficient to establish that appellant sustained an injury on July 6, 2009.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the July 6, 2009 employment incident, she has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant did not submit sufficient medical evidence to establish that the July 6, 2009 employment incident caused her low back condition.

[6] *C.B.*, 61 ECAB ___ (Docket No. 09-2027, issued May 12, 2010); *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the April 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 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