United States Department of Labor
Employees' Compensation Appeals Board

K.R., Appellant	)	
and	)	**Docket No. 10-1740**
	)	**Issued: May 3, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Schuylerville, NY, Employer	)	

Appearances:
Appellant, pro se
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 June 18, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated May 17, 2010, denying her claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a back condition causally related to factors of her federal employment.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following issuance of the May 17, 2010 Office decision and on appeal, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence, together with a written request for reconsideration to the Office, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

FACTUAL HISTORY

On February 24, 2010 appellant, then a 53-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a back condition, described as "back pain to sciatic nerve," due to factors of her federal employment.

In an undated narrative statement, appellant described implicated factors of her federal employment. She worked a 2.5-month detail and she was told to take her first class mail to the street for delivery which caused her to drive on the road longer each day. Appellant stated that her seat was ergonomically incorrect and she used a pillow to support her back while driving. She alleged that both of these factors resulted in a back condition. Appellant submitted a February 16, 2010 prescription note with an illegible signature advising her not to return to work for one week.

In an attending physician's report dated February 22, 2010, Dr. Angela G. Condy, Board-certified in family medicine, diagnosed "radicular low back pain." She checked a box "yes" advising that appellant's condition was caused or aggravated by an employment activity.

On March 1, 2010 the Office requested additional evidence, including a detailed description of the employment activities which contributed to appellant's alleged back condition. It also requested a comprehensive medical report containing a diagnosis, description of her symptoms, the results of examinations and tests and medical rationale explaining how her diagnosed condition was causally related to specific factors of her employment.

In a narrative statement dated March 4, 2010, appellant clarified the implicated factors of her federal employment. She normally cased her mail which allowed her to drive from 3 to 3.5 hours a day. On her 2.5-month detail, appellant was required to take her 1st class mail trays to the street together with the mail that she had to case, increasing her road time from 5 to 6 hours a day. Her car seat was slanted to the right and caused back pain. Appellant reported a history of a herniated disc in 1996 and prior back surgery with full recovery and no problems. She fractured her pelvis in a 2006 accident. Appellant returned to work at her regular duty station on February 27, 2010.

Appellant submitted progress notes with illegible signatures dated February 10, 13 and 22, 2010. She was diagnosed with radicular low back pain down her right leg as a result of delivering up to 60 pounds of mail. Appellant's 1996 herniated disc and 2006 pelvis fracture were also listed.

In a March 1, 2010 medical report, Barbara Bevis-Hamel, a physical therapist, diagnosed acute lumbar strain secondary to a work-related injury.

In a March 11, 2010 medical report, Dr. Condy reported that appellant saw her for right back and leg pain. She indicated that appellant's mail truck seat was tilted and, as a result, this affected her musculature. Dr. Condy advised that appellant could return to work as long as she did not reuse the seat and that her "symptoms will resolve."

By decision dated May 17, 2010, the Office denied appellant's occupational disease claim on the grounds that the evidence submitted did not address her work duties or relate how her job caused her back condition.

LEGAL PRECEDENT

An employee seeking benefits under the Act[3] 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 and that an injury[4] was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical 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 implicated 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.[7]

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish that factors of federal employment caused or aggravated her back condition. While appellant submitted a statement in which she identified the factors of employment that she believed caused the condition, in order to establish her claim, she must also submit rationalized medical evidence

[3] 5 U.S.C. §§ 8101-8193.

[4] The Office's regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

[5] *See Ellen L. Noble*, 55 ECAB 530 (2004); *O.W.*, Docket No. 09-2110 (issued April 22, 2010).

[6] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989); *D.R.*, Docket No. 09-1723 (issued May 20, 2010).

[7] *O.W., supra* note 5.

which explains how her back condition was caused or aggravated by the implicated employment factors.[8]

In a February 22, 2010 medical report, Dr. Condy diagnosed radicular low back pain and checked a box "yes" indicating that appellant's condition was caused or aggravated by an employment activity. Although the "yes" check mark indicates support for causal relationship, her medical report is insufficient to establish a causal relationship.[9] The Board has held that when a physician's opinion on causal relationship consists only of a check mark on a form, without more by way of medical rationale, the opinion is of diminished probative value.[10] Even though Dr. Condy indicated with a check mark "yes" that appellant's condition was caused or aggravated by her employment, she failed to provide a sufficient medical rationale explaining the relationship between appellant's back condition and the implicated employment factors.[11] In a March 11, 2010 report, she indicated that appellant's mail truck seat was tilted which affected her musculature. Dr. Condy advised that appellant could return to work as long as she did not reuse that same seat. Although she identified a factor of appellant's federal employment, she failed to address the issue of causal relationship as she did not provide any explanation as to how sitting on a tilted car seat, caused or aggravated her back condition. Lacking medical rationale on the issue of causal relationship, Dr. Condy's reports are insufficient to establish that appellant sustained an employment-related injury.

In a March 1, 2010 report, Ms. Bevis-Hamel diagnosed acute lumbar strain secondary to a work-related injury. The Board has held that physical therapists[12] are not physicians under the Act[13] and therefore Ms. Bevis-Hamel's report is not probative medical evidence. The case record contains a prescription note and a series of progress notes dated February 10, 13, 16 and 22, 2010 with illegible signatures. These forms, lacking proper identification, cannot be considered as probative evidence. A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in the Act.[14] Therefore, appellant did not meet her burden of proof.

Appellant has the burden to submit a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition,

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[8] *Leslie C. Moore*, 52 ECAB 132 (2000); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

[9] *See Lucrecia Nielsen*, 42 ECAB 583 (1991); *Lillian Jones*, 34 ECAB 379 (1982) (an opinion on causal relationship which consists only of a physician checking yes to a medical form report question on whether the claimant's disability was related to the history given is of little probative value).

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

[11] *See Thomas L. Hogan*, 47 ECAB 323, 328-29 (1996).

[12] *James Robinson, Jr.*, 53 ECAB 417 (2002); *Vickey C. Randall*, 51 ECAB 357 (2000); *see R.C.*, Docket No. 09-2095 (issued August 4, 2010).

[13] 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

[14] *See Merton J. Sills*, 39 ECAB 572 (1988). *See also Bradford L. Sutherland*, 33 ECAB 1568 (1982).

medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed and medical evidence establishing that the diagnosed condition is causally related to the implicated employment factors. The Board finds that she failed to submit sufficient medical evidence establishing causal relationship between her condition and factors of her federal employment. Although the Office informed appellant of the deficiencies in the evidence, she did not meet her burden of proof to establish that she sustained an employment-related injury.[15]

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a back condition in the performance of duty causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 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] *O.W.*, *supra* note 5.