United States Department of Labor
Employees' Compensation Appeals Board

B.D., Appellant	)	
and	)	**Docket No. 11-464**
	)	**Issued: September 19, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Beulah, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 21, 2010 appellant filed a timely appeal of the Office of Workers' Compensation Programs' (OWCP) November 9, 2010 decision denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 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 established that she sustained a traumatic injury in the performance of duty on June 24, 2008.

FACTUAL HISTORY

On December 29, 2008 appellant, then a 41-year-old rural carrier, filed a traumatic injury claim alleging that, on June 24, 2008, she sustained a neck injury when her postal vehicle was involved in a motor vehicle accident (MVA). She stated that at the time of the accident, her neck

[1] 5 U.S.C. § 8101 *et seq.*

made cracking noises and months later, she developed headaches and numbness and tingling in her hands and arms. Appellant first received medical care on December 17, 2008.

On January 15, 2009 OWCP advised appellant of the factual and medical evidence needed to establish her claim. Appellant was asked to provide a physician's report with a diagnosis and a rationalized opinion on how the claimed event caused the diagnosed condition. She was also asked to explain why she delayed seeking medical treatment for six months.

The record contains a June 24, 2008 accident report indicating that appellant's postal vehicle was struck by another vehicle that was attempting to pass as she was turning. The record also contains a June 24, 2008 patient declination form from Bensie County EMS reflecting that appellant refused transport on that date. In a letter dated January 26, 2009, appellant explained that she believed that she was "alright" after the accident but was "probably in shock" when she refused treatment. She alleged that she had been experiencing pain and discomfort ever since.

Appellant submitted reports from November 12 to December 19, 2008 from Jacqueline Norton, a physicians' assistant, who diagnosed cervicalgia and stated that appellant had been experiencing neck pain radiating to her hand and headaches since being involved in a MVA in June 2008. She also submitted a November 12, 2008 report of an x-ray of the cervical spine and a January 19, 2009 report of a magnetic resonance imaging (MRI) scan of the cervical spine.

In a March 17, 2009 decision, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish a causal relationship between the accepted June 24, 2008 accident and her claimed neck condition.

On April 13, 2009 appellant, through her representative, requested a telephonic hearing.[2]

Appellant submitted reports dated March 12 and July 9, 2009 from Dr. Geoffrey K. Turner, a Board-certified internist, who diagnosed headache (post-traumatic) and cervicalgia. Examination of the cervical spine revealed decreased range of motion, painful movements and restricted flexion and extension.

In a July 14, 2009 report, Dr. G. Tuzane, a treating physician, diagnosed headache and neck injury, noting the June 24, 2008 as the date of injury. In response to the question as to whether there was a causal relationship between the diagnosis and the history of injury, he stated, "possible."

The record contains a February 3, 2009 nerve conduction study (NCS) and electromyogram (EMG) report from Dr. Karen Meyer, a Board-certified physiatrist. Testing of the left upper extremity revealed electrodiagnostic evidence of moderate carpal tunnel syndrome without evidence of axonal loss or of cervical radiculopathy or plexopathy. Dr. Meyer stated that "clinically," appellant had whiplash syndrome from a June 24, 2008 MVA, as well as a suspected postconcussive syndrome. On March 4, 2009 he diagnosed "whiplash due to MVA June 24, 2008."

[2] OWCP initially denied appellant's claim in a February 20, 2009 decision. It reissued its decision denying the claim on March 17, 2009.

In an April 27, 2009 report, Dr. Stephen J. Andriese, a Board-certified physiatrist, provided a history of a June 24, 2008 MVA. On examination, Spurlings maneuver was negative for radicular symptoms. Appellant was tender over the occipital ridge and over the cervical facet at S1. The results of a recent MRI scan revealed uncovertebral joint degenerative changes, narrowing right C5-6 neural foramen and C6-7 disc bulging. Dr. Andriese diagnosed "cervicalgia, likely cervical facetogenic pain related to whiplash injury from [MVA June 24, 2008]," with related occipital neuralgia and insomnia, and "bilateral upper extremity paresthesias described in the wake of the above-mentioned accident with some evidence of carpal tunnel syndrome...."

On December 11, 2009 Roberta Herbst, a physicians' assistant, diagnosed torticollis.

In an April 6, 2010 report, Dr. Douglas J. Coles, a Board-certified internist, stated that appellant had chronic neck pain radiating into both upper extremities, more so on the left. He noted that she was involved in a MVA on June 24, 2008 in which the vehicle she was driving was struck by another vehicle. Physical examination findings included pain with palpation of the cervical spine. Dr. Coles diagnosed "whiplash[-]type injury c-spine" and degenerative joint disease of the cervical spine. In response to a question as to whether there was a causal relationship between the history of injury and the diagnosed condition, he responded, "Yes."

At the August 11, 2010 hearing, appellant testified that she notified her employer immediately following the June 24, 2008 accident. She explained that she failed to seek medical attention right away because she did not believe she was injured and had a delayed reaction to the accident.

By decision dated November 9, 2010, OWCP's hearing representative affirmed the March 17, 2009 decision finding that the medical evidence was insufficient to establish a causal relationship between the June 24, 2008 MVA and the claimed cervical condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[4]

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. First, the employee must submit sufficient evidence to establish that he or she actually

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

experienced the employment incident at the time, place and in the manner alleged.[5] 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.[6]

The medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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 of the claimant, 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.[7]

ANALYSIS

OWCP accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits, and that the June 24, 2008 MVA occurred in the performance of duty as alleged. The issue, therefore, is whether she has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

Appellant submitted reports from November 12 to December 19, 2008 from Jacqueline Norton, a physicians' assistant, who diagnosed cervicalgia and stated that appellant had been experiencing neck pain radiating to her hand and headaches since being involved in a MVA in June 2008. She also submitted a December 11, 2009 report of Roberta Herbst, a physicians' assistant, who diagnosed torticollis. As physicians' assistants do not qualify as "physicians" under FECA, the Board finds that these reports do not constitute probative medical evidence.[8]

In reports dated March 12 and July 9, 2009, Dr. Turner provided findings on examination and diagnosed headache (post-traumatic) and cervicalgia. He did not, however, provide a definitive diagnosis[9] or render an opinion as to the cause of appellant's condition. Medical

[5] *Robert J. Krsty*en, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[6] *Id.*

[7] *Ern Reynolds*, 45 ECAB 690, 695 (1994); *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

[8] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of FECA 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." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[9] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *See C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339, 342 (2004).

evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10]

On July 14, 2009 Dr. Tuzane diagnosed headache and neck injury, noting June 24, 2008 as the date of injury. In response to the question as to whether there was a causal relationship between the diagnosis and the history of injury, he stated, "possible." Dr. Tuzane did not provide a definitive diagnosis, examination findings or an accurate factual and medical history. Moreover, his opinion regarding a possible causal relationship between appellant's cervical condition and the June 24, 2008 incident is speculative. For all of these reasons, Dr. Tuzane's report is of limited probative value.

In an April 6, 2010 report, Dr. Coles diagnosed "whiplash-type injury c-spine" and degenerative joint disease of the cervical spine, noting that appellant was involved in a MVA on June 24, 2008. In response to a question as to whether there was a causal relationship between the history of injury and the diagnosed condition, he responded, "Yes." A mere checkmark or affirmative notation in response to a form question on causal relationship is not sufficient to establish a claim.[11] Dr. Coles did not describe how the June 24, 2008 accident was competent to cause appellant's vaguely diagnosed conditions, or how he was able to make a medical determination of such a causal relationship nearly two years after the accident. Accordingly, his report is of diminished probative value.

On February 3, 2009 Dr. Meyer provided the results of NCS/EMG testing, which revealed electrodiagnostic evidence of moderate carpal tunnel syndrome without evidence of axonal loss or of cervical radiculopathy or plexopathy. She stated that "clinically," appellant had whiplash syndrome from a June 24, 2008 MVA, as well as a suspected postconcussive syndrome. On March 4, 2009 Dr. Meyer diagnosed "whiplash due to [MVA June 24, 2008]." Her report lacks probative value on several counts. The diagnosis is vague and speculative. Moreover, Dr. Meyer failed to explain how appellant's condition was causally related to the June 24, 2008 accident. Medical conclusions unsupported by rationale are of little probative value.[12] In this case, such an explanation is particularly important in light of the fact that appellant had no symptoms immediately following the accident and failed to seek medical treatment for six months.

In an April 27, 2009 report, Dr. Andriese provided a history of a June 24, 2008 MVA and examination findings. He diagnosed "cervicalgia, likely due to whiplash injury from June 24, 2008 MVA," with related occipital neuralgia and insomnia, and "bilateral upper extremity paresthesias described in the wake of the above-mentioned accident with some evidence of carpal tunnel syndrome. Dr. Andriese's opinion regarding the likely cause of appellant's condition is speculative in nature and thus of diminished probative value.[13] More importantly, he

[10] *Michael E. Smith*, 50 ECAB 313 (1999).

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

[12] *Willa M. Frazier*, 55 ECAB 379 (2004).

[13] *See Ellen L. Noble*, 55 ECAB 530 (2004).

failed to explain the causal connection between the June 2008 incident and appellant's current conditions. Therefore, Dr. Andriese's report is insufficient to establish her claim.

Appellant expressed her belief that her cervical condition resulted from the June 24, 2008 MVA. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[14] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[15] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the work-related incident is not determinative.

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how appellant's claimed cervical condition was caused or aggravated by her employment, she has not met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury on June 24, 2008 in the performance of duty.

[14] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[15] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 9, 2010 decision is affirmed.

Issued: September 19, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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