United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 12-811**
	)	**Issued: August 13, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Fort Worth, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 29, 2012 appellant filed a timely appeal from a September 27, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 sustained a back condition causally related to factors of her federal employment.

FACTUAL HISTORY

On March 25, 2011 appellant, then a 50-year-old mail processing clerk, filed an occupational disease claim alleging that she sustained sciatica due to factors of her federal employment. She stopped work on March 24, 2011.

[1] 5 U.S.C. § 8101 *et seq.*

In a letter dated March 25, 2011, appellant related that she accepted a modified-duty assignment on February 25, 2011 and returned to work after March 4, 2011. Prior to her return, she had not worked since February 27, 2004 due to disability from a prior employment injury. Appellant asserted that the employing establishment gave her no time to adjust to her duties and that she experienced aches and pains. Laverne Macon, a supervisor, offered her a spray for pain and informed appellant that her assignment to automation was not ideal given that she had not worked since 2004.[2] Appellant's pain increased such that she had trouble walking. Her physician found that she should remain off work beginning March 29, 2011 pending testing.

By letter dated April 7, 2011, the employing establishment noted that appellant had work restrictions under claim File No. xxxxxx975 and had voluntarily bid on her current assignment. Appellant's attending physician changed her work restrictions to a lift and carry restrictions of 40 to 45 pounds so that she could perform the bid assignment.

In a disability certificate dated April l5, 2011, Dr. Karen M. Perl, an osteopath and Board-certified physiatrist, evaluated appellant for an injury to the lumbar spine. She advised that appellant was totally disabled from April 8 to 22, 2011.

A magnetic resonance imaging (MRI) scan study dated April 19, 2011 revealed mild facet hypertrophic changes at L3-4, moderate bilateral facet arthropathy and a mild disc bulge at L4-5 and moderate facet arthopathy with a mild disc bulge at L5-S1.

By decision dated May 13, 2011, OWCP denied appellant's claim finding that she did not establish an injury as alleged. It found that she had not established the employment factors alleged to have caused her condition or submitted medical evidence of a diagnosed condition as a result of her employment.

In a statement dated May 12, 2011, received by OWCP on May 16, 2011, the employing establishment related that appellant was off work from July 1, 2010 until February 25, 2011 as part of the National Reassessment Program (NRP). It controverted her claim based on the medical evidence.

On May 25, 2011 appellant requested a review of the written record before an OWCP hearing representative. She submitted a statement describing her work duties since February 25, 2011. Appellant also submitted medical evidence, including a report dated March 31, 2011 from Dr. Perl, who found that appellant was injured at work on March 24, 2011. She related:

> "[Appellant] states that she started back in automation on March 4, 2011. She reports she had soreness and pain in the lumbar spine, however, her coworkers told her that was normal. [Appellant] states that as she continued doing her job in automation she started having worse and worse low back pain and then radiation into the right lower extremity. Her job requirement is 40 pounds lifting often and 45 pounds occasionally…. Last week, [appellant's] pain became so bad that she

[2] In an April 20, 2011 e-mail message, Ms. Macon related that she advised appellant to be careful as she had been out of work since 2004. She provided her with a spray for pain relief.

was not able to work due to her low back pain and radiation into the right lower extremity. She reports that the pain has gotten to such a degree that she has difficulty bending. [Appellant] reports that her pain seems to be set off using the machines in automation including the repetitive bending, lifting and sweeping. At this point she is having trouble with her low back with radiation into the right lower extremity."

On examination, Dr. Perl found a positive right straight leg test and Patric-Fabere's test and a loss of sensation at the right medial and lateral thigh. She diagnosed an injury to the lumbar spine due to appellant's work duties on March 24, 2011 and lumbar radiculitis most likely due to a disc herniation caused by her work in automation.

In a disability certificate dated March 31, 2011, Dr. Perl found that appellant was unable to work from March 24 to April 8, 2011 due to lumbar spine injury. On April 15, 2011 she found that appellant was "having ongoing problems with her lumbar spine and is incapacitated [from] her job at the current time." Dr. Perl diagnosed a lumbar spine injury due to appellant's work duties and lumbar radiculitis of the right lower extremity which was most likely a "lumbar disc herniation related to [her] automation duties."

In a progress report dated April 22, 2011, Dr. Perl noted that an MRI scan study showed disc bulges at L4-5 and L5-S1 with bilateral foraminal narrowing. She diagnosed an injury to the lumbar spine "related to [her] duties on March 24, 2011" and diffuse disc bulges at L4-5 and L5-S1 with bilateral foraminal narrowing due to her work duties. Dr. Perl asserted that her "injury should be accepted under lumbar disc herniation."

By decision dated September 27, 2011, OWCP's hearing representative affirmed the May 13, 2011 decision as modified to find that appellant established the occurrence of the alleged work factors.[3] She found, however, that the medical evidence was insufficient to establish causal relationship.

On appeal, appellant contends that she did not have similar problems with her back prior to working in automation.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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 FECA, that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the

[3] OWCP's hearing representative indicated that fact of injury had been established; however, it is apparent that she meant that appellant had established the occurrence of the identified work factors.

[4] 5 U.S.C. § 8101 *et seq.*

employment injury.[5] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[6]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;[7] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[8] and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[9]

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[10] The opinion of the physician must be based on a complete factual and medical background of the claimant,[11] must be one of reasonable medical certainty[12] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[13]

ANALYSIS

Appellant attributed her low back condition and sciatica to working in automation from March 5 to 24, 2011. OWCP accepted the occurrence of the claimed employment work activities. The issue, therefore, is whether the medical evidence establishes a causal relationship between the claimed conditions and the employment factors.

On March 31, 2011 Dr. Perl noted that appellant began working in automation on March 4, 2011. She experienced pain and soreness in her back that increased such that she had difficulty bending and had radiation into her right lower extremity. Dr. Perl provided positive clinical findings and diagnosed a lumbar spine injury due to employment duties on March 24,

[5] *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[7] *Michael R. Shaffer*, 55 ECAB 386 (2004).

[8] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[9] *Beverly A. Spencer*, 55 ECAB 501 (2004).

[10] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[11] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[12] *John W. Montoya*, 54 ECAB 306 (2003).

[13] *Judy C. Rogers*, 54 ECAB 693 (2003).

2011 and lumbar radiculitis probably due to a disc herniation caused by her work in automation. She found that appellant was totally disabled. Dr. Perl, however, did not provide a reasoned opinion explaining how work duties resulted in a lumbar spine injury and lumbar radiculitis.[14] A physician must provide an opinion on whether factors of employment caused or contributed to a claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rationale.[15] Further, appellant has not identified a specific incident occurring on March 24, 2011 resulting in an injury.

In an April 15, 2011 report, Dr. Perl found that appellant remained disabled. She again diagnosed a lumbar spine injury due to work duties on March 24, 2011 and lumbar radiculitis most likely caused by a work-related disc herniation. Dr. Perl's opinion that appellant's lumbar radiculitis was most likely due to a disc hernation resulting from employment duties is couched in speculative terms and thus of diminished probative value.[16] Further, she did not provide a firm diagnosis of the lumbar spine injury occurring on March 24, 2011 or explain what occurred on that date to result in the injury. Without a firm diagnosis supported by medical rationale, Dr. Perl's opinion is of little probative value.[17]

On April 22, 2011 Dr. Perl reviewed the MRI scan study and diagnosed diffuse disc bulges at L4-5 and L5-S1 with foraminal narrowing due to appellant's work duties and a lumbar spine injury due to a March 24, 2011 employment injury. She did not, however, provide any rationale for her causation finding. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.[18]

On appeal, appellant contends that she had no back problems prior to working in automation. An award of compensation, however, may not be based on surmise, conjecture, speculation or upon her own belief that there is a causal relationship between her claimed condition and her employment.[19] Appellant must submit a physician's report in which the physician reviews those factors of employment identified by her as causing her condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and

[14] *See Jacquelyn L. Oliver*, 48 ECAB 232 (1996) (medical conclusions unsupported by rationale are of diminished probative value).

[15] *See supra* note 12.

[16] *Rickey S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[17] *See Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician's opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

[18] *See supra* note 9.

[19] *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

present medical rationale in support of his or her opinion.[20] She failed to submit such evidence and therefore failed to discharge her burden of proof.

Appellant submitted new medical evidence with her appeal. The Board has no jurisdiction to review new evidence on appeal.[21] Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a back condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 13, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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

[20] *D.D.*, 57 ECAB 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

[21] *See* 20 C.F.R. § 501.2(c)(1).