United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 14-88**
	)	**Issued: April 18, 2014**
U.S. POSTAL SERVICE, SOUTH JERSEY PERFORMANCE CLUSTER, BELLMAWR, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 17, 2013 appellant, through her attorney, filed a timely appeal from the May 20, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 met her burden of proof to establish an injury in the performance of duty on August 11, 2012.

FACTUAL HISTORY

On October 15, 2012 appellant, then a 54-year-old rural carrier, filed a notice of recurrence (Form CA-2a) claiming that her work stoppage on August 13, 2012 constituted a

[1] 5 U.S.C. §§ 8101-8193.

recurrence of disability due to her previous December 19, 2006 traumatic work injury.[2] She indicated on the form that she was moving mail trays and buckets in the back of a mail truck on August 11, 2012 and experienced "the same pain." Appellant stated that, due to the December 19, 2006 injury, she was working in a modified position and asserted that currently there was no work available for her. On the same form, appellant's supervisor stated that limited-duty work performing administrative, clerical and express delivery duties was available. The supervisor indicated that appellant was provided city delivery duties that required her to stand at a cluster box and sort mail. Appellant attempted this work on August 11, 2012 but stated that she was physically unable to do this work again.[3]

Appellant submitted a September 13, 2012 report, in which Dr. Vannette N. Perkins, an attending Board-certified anesthesiologist, noted that she was returning for routine follow up with complaints of recurrent low and mid back pain (worse on the right) with spasms, stiffness and shooting into her right buttock. She also reported occasional dysesthesias in her right calf. Dr. Perkins did not mention any specific recent work incident but indicated that appellant had a work injury on December 19, 2006 while lifting and twisting to load a truck. She detailed appellant's previous treatment and diagnosed hypertension, lumbar spondylosis, chronic lower back lumbago with excellent response to nerve block and lumbar radiculopathy. Dr. Perkins noted that there was no change in the medication needed, that appellant was tolerating modified duty well and that no changes in her work status were necessary based on the examination findings. She continued to indicate that appellant could work light duty with restrictions on lifting, pushing or pulling more than 20 pounds.[4]

In an August 24, 2012 work restriction form, Dr. Perkins indicated that appellant could sit for four hours per day, walk for two hours and engage in repetitive movement for four hours. Appellant could not engage in standing, pushing, reaching above the shoulder, twisting, bending, stooping, pulling, lifting, squatting, kneeling or climbing. Dr. Perkins indicated that these were permanent work limitations, but did not explain why these restrictions differed from those provided in her May 3 and September 12, 2012 reports.[5]

In an October 19, 2012 letter, OWCP advised appellant that it would develop her claim as a traumatic injury claim because she was claiming disability due to a new injury caused by work

[2] Under a separate claim file, OWCP accepted that on December 19, 2006 appellant sustained a lumbar radiculopathy due to unloading a truck at work. On December 20, 2011 it granted her a schedule award for a nine percent permanent impairment of her right leg.

[3] Appellant also filed claim for compensation forms for wage loss beginning August 25, 2012 and continuing.

[4] Appellant reported the same physical complaints when Dr. Perkins examined her on May 3, 2012. Dr. Perkins provided the same diagnoses and work restrictions on September 13, 2012 as she did on May 3, 2012. Appellant had nerve block injections at L3-4, L4-5 and L5-S1 on both dates.

[5] On August 25, 2012 the employing establishment made a modified job offer for a rural carrier position which listed work duties of delivering mail to cluster boxes for four hours per day and express mail for two hours. The physical requirements of the position were driving six hours per day, standing four hours and fingering mail four hours. Appellant indicated on the job offer that she was refusing the offer as she felt that it did not met her physical restrictions.

duties rather than a spontaneous recurrence of the December 19, 2006 injury. It requested that she submit additional factual and medical evidence in support of her claim.

In a November 27, 2012 decision, OWCP denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an injury in the performance of duty on August 11, 2012. Appellant did not submit a report indicating that she sustained a diagnosed condition due to the August 11, 2012 work factors, *i.e.*, moving mail trays and buckets in the back of a mail truck.

Appellant requested a telephonic hearing with an OWCP hearing representative. Prior to the hearing, she submitted a December 6, 2012 form report in which Dr. Perkins noted a date of injury of August 11, 2012 as well as February 19, 2006 and indicated under "history of injury" that appellant reported low and mid back pain while lifting and twisting in the back of a mail truck. Dr. Perkins listed the dates of service in 2012 as March 9, May 3 and September 13, 2012. She diagnosed lumbar facet syndrome, lumbar radiculopathy/radiculitis and thoracic facet syndrome and checked a "yes" box indicating that appellant's condition was caused or aggravated by the employment activity. Dr. Perkins noted that appellant was totally disabled beginning on August 13, 2012.[6] A prescription slip completed on December 6, 2012 indicated that appellant had been examined and that she had no new injuries but that there was an exacerbation of her preexisting condition for which treatment had been necessary.

In a March 4, 2013 report, Dr. Perkins indicated that appellant reported an injury on August 11, 2012 "which aggravated her preexisting condition." She noted that appellant presented "for her new injury" on September 13, 2012 and discussed the treatment provided on that date. Dr. Perkins indicated that physical examination revealed thoracic and lumbar facet pain to palpation bilaterally at T11-12, L12-L1, L3-4, L4-5 and L5-S1 and she diagnosed thoracic radiculopathy, lumbar radiculopathy with bilateral lower extremity dysesthesias, bilateral lumbar facet syndrome requiring facet injections periodically and thoracic facet syndrome requiring thoracic facet injections periodically. She stated:

> "[Appellant's] lifting and twisting injury which was similar to her initial injury of 2006, which occurred on August 11, 2012 is an exacerbation of her prior condition as she was unable to tolerate the physical duties associated with returning to work after doing light duty/sedentary office work for three years."
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> * * *
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> "[Appellant] requires ongoing medical management and is unable to perform work due to the reinjury of August 11, 2012, which is related to her initial injury with the same diagnoses with acute exacerbation from the work[-]related injury of December 2006."

During the March 18, 2013 hearing, appellant stated that on August 11, 2012 she attempted to pick up trays of mail and rearrange them in the back of her truck when she again felt back pain. She indicated that she received no treatment between August 11 and

[6] In a Duty Status Report dated December 6, 2012, Dr. Perkins recommended extensive work restrictions.

September 13, 2012, but noted that there had been an earlier appointment scheduled which she canceled due to fear of potentially contracting spinal meningitis from epidural injections. Appellant claimed that in August 2012 the employing establishment stopped providing job duties within her restrictions.

In an April 16, 2013 report, Dr. Perkins indicated that she was aware that appellant sustained a work injury on August 11, 2012 as a result of lifting trays and buckets of mail in the back of her mail vehicle. She noted, "With the injury of August 11, 2012, [appellant] once again experienced an injury in her back as a result of lifting. The mechanism of injury is similar; however, she was asymptomatic at the time of the injury of August 11, 2012." Dr. Perkins discussed the treatment provided for this injury and indicated that the treatment was later postponed as appellant was under care for a nonindustrial cancer condition and underwent surgery for this condition on November 14, 2012. She stated:

> "It appears [that appellant] is approaching maximum medical improvement for the injury, which occurred on August 11, 2012 with the firm diagnosis of post[-]traumatic lumbar facet syndrome at L3-4, L4-5 and L5-S1 as a result of the lifting/twisting injury which occurred on August 11, 2012. As her symptoms were not active from her previous injury on August 11, 2012 I would not consider this an aggravation of her low back condition but a separate injury…. [Appellant] did experience post-traumatic lumbar radiculitis as a result of the lifting injury on August 11, 2012 with no definitive evidence of changes on her MRI [scan] as her radicular pain improved with medical management including anti-inflammatories and home conditioning exercises."

An April 19, 2013 e-mail from appellant's postmaster was submitted, which indicated that he notified appellant in mid-July 2012 that the limited-duty assignment she had been working would no longer be available as of August 11, 2012. He noted that, a short time after he told her of this change, he offered her a limited-duty job as a city carrier within her restrictions. The postmaster noted that appellant verbally accepted this job offer on August 10, 2012 and was told a written offer would be available the following morning. He noted that she called in sick the next day through the automated call out center system and later that day informed him that she was refusing the limited-duty job offer because she was unable to perform its job duties.

In a May 20, 2013 decision, the hearing representative affirmed OWCP's November 27, 2012 decision denying appellant's claim for an August 11, 2012 work injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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 employment injury.[7] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[8]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.[9] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[10]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.[11] The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship. Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.[12]

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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[13] This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical

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

[8] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

[9] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[10] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, *id*.

[11] *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

[12] *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[13] *See* 20 C.F.R. § 10.5(x); Federal (FECA) Procedure Manual, *supra* note 9 at *Recurrences*, Chapter 2.1500.3 (June 2013).

requirements of such an assignment are altered so that they exceed his or her established physical limitations.[14]

The Board has held that the fact that a condition manifests itself or worsens during a period of employment[15] or that work activities produce symptoms revelatory of an underlying condition[16] does not raise an inference of causal relationship between a claimed condition and employment factors.

ANALYSIS

In this case, appellant initially filed a claim for recurrence of a previous work injury of December 19, 2006. 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 resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. A recurrence may also occur when a light-duty assignment made specifically to accommodate an employee's physical limitations due to appellant's work-related condition (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) is withdrawn or when the physical requirements of such an assignment are altered so that they exceed her established physical limitations.[17] Appellant clearly described a new work incident on August 11, 2012 while lifting in the back of a mail truck. Although she alleged that work within her established restrictions was not available in August 2012, the evidence of record, including documents from the employing establishment, does not establish this assertion. For these reasons, OWCP properly developed this case as a new traumatic work injury.

Appellant has stated that on August 11, 2012 she was working delivering express and cluster box mail and that, while moving trays and buckets of mail in the back of her truck, she had back pain. The employing establishment has not disputed that she was performing these activities on August 11, 2012 and they constitute accepted work factors. However, the Board finds that appellant did not submit sufficient medical evidence to establish an injury in the performance of duty on August 11, 2012 due to these work factors.

Before OWCP and on appeal, counsel argued that appellant's claim for an August 11, 2012 work injury was established by the reports of Dr. Perkins, an attending Board-certified anesthesiologist. The Board finds that these reports do not establish appellant's claim as Dr. Perkins did not provide adequate medical rationale in support of her opinion on causal relationship.

Appellant submitted a September 13, 2012 report in which Dr. Perkins noted that she was returning for routine follow up with complaints of recurrent low and mid back pain (worse on the

[14] *Id.*

[15] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[16] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[17] *See supra* notes 13 and 14.

right) with spasms, stiffness and shooting into her right buttock. She also reported occasional dysesthesias in her right calf. Dr. Perkins did not mention any specific recent work incident but indicated that appellant had a work injury on December 19, 2006 while lifting and twisting to load a truck. This report does not contain any mention of an August 11, 2012 work incident and therefore cannot serve as a basis to accept the occurrence of a work-related injury on August 11, 2012. It should be noted that September 13, 2012 is the first occasion that appellant sought medical treatment after the claimed August 11, 2012 work injury. Moreover, the Board notes that, when the examination findings for Dr. Perkins' September 13, 2012 report are compared to the examination findings found in her reports dated prior to August 11, 2012, these findings are essentially the same. Appellant had been receiving treatment for recurrent low and mid back pain (worse on the right) with spasms, stiffness and shooting pain in both legs for an extended period prior to September 2012. The complaints, diagnoses and work restrictions found in Dr. Perkins' September 13, 2012 report were essentially the same as those found in her May 3, 2012 report, which was produced at a time well prior to the August 11, 2012 lifting incident at work. As noted, her September 13, 2012 report did not identify any new specific injury on August 11, 2012 and stated that no changes were necessary in appellant's work status based on the findings on examination that day.

It was not until December 6, 2012 that Dr. Perkins noted that there had been a new work injury and then opined that appellant was totally disabled retroactively to August 11, 2012. In a December 6, 2012 form report, she noted a date of injury of August 11, 2012 (as well as February 19, 2006) and indicated that appellant was totally disabled beginning on August 13, 2012. Dr. Perkins diagnosed lumbar facet syndrome, lumbar radiculopathy/ radiculitis and thoracic facet syndrome and checked a "yes" box indicating that appellant's condition was caused or aggravated by the employment activity. However, as she did no more than check "yes" to a form question, her opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof. Dr. Perkins did not provide a detailed explanation of how specific work activities on August 11, 2012 could have caused or contributed to the diagnosed conditions.[18]

In a March 4, 2013 report, Dr. Perkins indicated that appellant reported an injury on August 11, 2012 which aggravated her preexisting condition. She noted that appellant presented for her new injury on September 13, 2012 and she diagnosed thoracic radiculopathy, lumbar radiculopathy with bilateral lower extremity dysesthesias, bilateral lumbar facet syndrome requiring facet injections periodically and thoracic facet syndrome requiring thoracic facet injections periodically. Dr. Perkins stated, "[Appellant's] lifting and twisting injury which was similar to her initial injury of 2006, which occurred on August 11, 2012 is an exacerbation of her prior condition as she was unable to tolerate the physical duties associated with returning to work after doing light duty/sedentary office work for three years." This report, however, is of limited probative value on the relevant issue of the present case in that she did not provide adequate medical rationale in support of her conclusion on causal relationship.[19] Such medical rationale is

[18] *See supra* note 12.

[19] *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

especially necessary in the present case because appellant did not seek medical care for one month after the claimed August 11, 2012 injury and Dr. Perkins did not mention an August 11, 2012 incident in her September 13, 2012 report. Dr. Perkins did not describe the implicated work factors in any detail or explain how they could have caused the observed conditions, nor did she explain why appellant's examination findings before and after August 11, 2012 were essentially the same.

In an April 16, 2013 report, Dr. Perkins indicated that, with the injury of August 11, 2012, appellant once again experienced a back injury as a result of lifting mail. She diagnosed post-traumatic lumbar facet syndrome at L3-4, L4-5 and L5-S1 due to the August 11, 2012 injury and asserted that this constituted a separate injury as appellant's symptoms were not active from her previous injury in December 2006. This report does not establish appellant's claim for an August 11, 2012 work injury as the Board has held that the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and employment factors.[20] Moreover, Dr. Perkins' opinion is not based on a complete and accurate medical history because appellant was, in fact, symptomatic prior to August 11, 2012. The report is of limited probative value for the further reason that Dr. Perkins' opinion on causal relationship appears to be primarily based on appellant's own representations rather than on objective medical findings.

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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on August 11, 2012.

[20] *See supra* notes 15 and 16.

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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