United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 16-0110**
	)	**Issued: April 4, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Bloomfield Hills, MI, Employer	)	

Appearances:
Paul H. Kullen, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 26, 2015 appellant, through counsel, filed a timely appeal from an August 24, 2015 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 occupational disease in the performance of duty.

FACTUAL HISTORY

This case has previously been on appeal before the Board. In a May 19, 2009 decision, the Board affirmed April 1 and September 3, 2008 OWCP decisions, which found that the medical evidence was not sufficient to establish that appellant's medical condition was causally

[1] 5 U.S.C. § 8101 *et seq.*

related to her employment duties.[2] In an April 17, 2012 decision, the Board affirmed an April 26, 2011 OWCP decision, which denied modification of its prior decisions, finding that appellant had not met her burden of proof to establish an injury in the performance of duty.[3] In an April 17, 2014 decision, the Board found that OWCP improperly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a). The Board found that the June 25, 2010 report from Dr. Robert A. Krasnick, a Board-certified physiatrist, constituted relevant and pertinent new evidence, not previously considered by OWCP. The Board remanded the case for OWCP to conduct a merit review and after such further development as deemed necessary, and advised that OWCP should issue an appropriate merit decision.[4] The facts and history contained in the prior appeals are incorporated herein by reference.

The relevant facts include that on November 25, 2006 appellant, then a 31-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained grade 1 anterolisthesis of L5-S1 due to lifting magazines at work. She first became aware that her condition was employment related in November 1998.[5] On February 5, 2002 a nonwork accident occurred when a car hood fell onto appellant's neck causing headaches and severe neck and low back pain. Appellant continued to work with restricted duties due to her low back. The employing establishment controverted appellant's claim and noted that she was last exposed to the work conditions alleged to have caused her condition on November 30, 2006 and that she had been placed on light-duty work. On September 11, 2008 appellant stopped work.

On remand from the appeal in Docket No. 14-0106, OWCP conducted a merit review. In a May 19, 2014 decision, it denied modification of its prior decision.

On May 19, 2015 appellant's counsel requested reconsideration. He submitted new medical evidence to support that the nonwork injury to her neck did not impact the development of her work-related lumbar spondylolisthesis, from which she was disabled from her employment.

In a May 18, 2015 report, Dr. Krasnick noted that he had treated appellant's lower back pain since March 8, 2010. He advised that he previously noted appellant's history which included that she had worked at the employing establishment as a distribution clerk since 1996. Dr. Krasnick advised that in 1998 appellant had a work injury when she developed lower back pain. He explained that on November 4, 1998 she was putting flats of mail into cases, when she developed lower back pain and was diagnosed with back strain. Dr. Krasnick related that appellant had chronic worsening back and leg pain which he described in his June 25, 2010

[2] Docket No. 08-2474 (issued May 19, 2009).

[3] Docket No. 11-1886 (issued April 17, 2012).

[4] Docket No. 14-0106 (issued April 17, 2014).

[5] The record reflects that in November 1998, appellant experienced low back pain after putting up routed flats. The claim was allowed for limited medical treatment under separate case number xxxxxx543. Appellant worked as a sale and service associate from approximately 2002 through approximately 2005, at which time, she returned to her job as a distribution clerk.

report. He addressed the relevance of appellant's 2002 nonwork injury, which occurred when the hood of a car fell on her neck. Dr. Krasnick explained that the medical evidence revealed that appellant sustained some trauma to the head without loss of consciousness. He related that she had x-rays of the cervical spine due to neck pain; however, the x-rays were unremarkable. Dr. Krasnick noted that appellant was taken off work for a short period of time due to the headaches or neck pain. He related that "co-existent" with the head and neck injury, she still had ongoing back pain and spondylolisthesis. Dr. Krasnick opined that her injuries to the head and neck had resolved, had no direct effect on her lower back, and were "unrelated injuries." He opined that starting with the low back strain of 1998, she had gradually progressive symptoms related to her back and leg symptoms, including pain, numbness, tingling and increasing disability in regards to her abilities at work. Dr. Krasnick advised that it was not until 2002, and despite a concurrent injury to the head and neck, "clearly without any causal relationship to the head and neck, that further imaging was done of her lower back and diagnosis of spondylolisthesis was made."

By decision dated August 24, 2015, OWCP denied modification of its prior decision.

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 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.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that 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. 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. 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

[6] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *Victor J. Woodhams*, 41 ECAB 345 (1989).

relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

ANALYSIS

OWCP denied appellant's reconsideration request because the evidence of record failed to establish the relationship between any diagnosed condition and established work-related events, such as lifting magazines at work occurred.

The Board finds that appellant submitted insufficient medical evidence to establish that her conditions of back pain and spondylolisthesis were caused or aggravated by the established work activities or any other specific factors of her federal employment.

Dr. Krasnick, in his June 25, 2010 report, explained that appellant did not have back pain until 1998 when she was working at the employing establishment. He asserted that in 1998, after heavy lifting and repetitive bending, she developed progressive back pain also affecting both legs. Dr. Krasnick advised that diagnostic testing since 2002 showed a progression of spondylolisthesis at the L5-Sl level as well as increased facet joint arthritic changes and foraminal narrowing. He opined that "within reasonable medical certainty, bending, lifting and twisting during the course of work caused injury to the L5-S1 disc, causing pain and further instability in 1998" and continued to progress thereafter. Dr. Krasnick advised that "because of the injury to the disc and the underlying nature of [appellant's] problem, it is more likely than not that the L5-S1 level was permanently and irreversibly damaged." He opined that "a workplace injury would not only have caused precipitation of symptoms, but acceleration of her underlying disease. This is consistent with [appellant's] history of having no back or leg pain prior to 1998 and progressive symptomatology since that time." This report is of limited probative value as Dr. Krasnick did not address the impact of the 2002 incident in which a car hood fell on appellant's neck. This is particularly important since 2002 is the year that appellant's condition began to progress.[9]

Appellant also provided a May 18, 2015 report from Dr. Krasnick who noted appellant's history and addressed the relevance of 2002 nonwork injury when a car hood fell on her neck. Dr. Krasnick noted that the medical evidence revealed some trauma to the head without loss of consciousness and that cervical spine x-rays were unremarkable. He also noted that appellant was taken off work for a short period of time due to the headaches or neck pain and that "coexistent" with the head and neck injury, she still had ongoing back pain and spondylolisthesis. Dr. Krasnick asserted that appellant's head and neck injuries resolved and had no direct effect on her lower back and they were "unrelated injuries." He reported that starting with the low back strain of 1998, she had gradually progressive symptoms related to her back and leg symptoms, including pain, numbness, tingling, and increasing disability in regards to her abilities at work. Dr. Krasnick explained that it was not until 2002, and despite a concurrent injury to the head and neck, "clearly without any causal relationship to the head and neck, that further imaging was done of [appellant's] lower back and diagnosis of spondylolisthesis was

[8] *Id.*

[9] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

made." The Board finds that this report does not sufficiently explain why he discounted the 2002 incident as the cause of her condition as Dr. Krasnick clearly notes that this was the year the spondylolisthesis diagnosis was made. He did not sufficiently explain how particular work duties would cause or contribute to a diagnosed medical condition. The need for detailed rationale is particularly important as Dr. Krasnick did not begin treating appellant until 2010, nearly 12 years after the onset of back pain in 1998, and about eight years after the car hood fell on her neck.[10]

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.[11] 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.[12] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. The Board finds that these reports are insufficiently rationalized and of limited probative value with regard to causal relationship.

On appeal, appellant's counsel argues that the medical evidence supported the approval of appellant's claim. However, as explained, the medical evidence is insufficient to establish the claim.

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 an occupational disease in the performance of duty.

[10] *See S.S.*, 59 ECAB 315 (2008) (the Board has held that contemporaneous evidence is entitled to greater probative value than later evidence).

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

[12] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board