United States Department of Labor
Employees' Compensation Appeals Board

CHRISTINA M. CARTER, Appellant	)	
and	)	**Docket No. 04-1456**
	)	**Issued: January 26, 2005**
U.S. POSTAL SERVICE, DISTRIBUTION CENTER, Southeastern, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On May 11, 2004 appellant, through her representative, filed a timely appeal from an Office of Workers' Compensation Programs' decision dated January 6, 2004 in which an Office hearing representative affirmed the denial of her back condition claim and a merit decision dated April 15, 2004 which denied modification of the denial of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these issues.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that her claimed lower back and leg conditions were sustained in the performance of duty.

FACTUAL HISTORY

On August 6, 2001 appellant, a 35-year-old clerk, filed an occupational disease claim alleging that on July 12, 2001 she first realized that her lumbar disc problem, leg and back pain was employment related.

Appellant submitted unsigned progress notes for the period June 13, 2000 through January 22, 2003 in support of her claim. The progress notes report that appellant had done well in her light-duty job subsequent to back surgery. On September 13, 2001 appellant related a recurrence of her symptoms which she attributed to "working in the 'blue room.'" A physical examination revealed "diminution to pinprick in the right lateral foot in the S1 distribution area" and it was noted that the August 14, 2001 magnetic resonance imaging (MRI) scan showed "no evidence of recurrent disc herniation." Based upon these findings, the progress notes stated that appellant "will always need to remain on light duty sorting mail which she is currently doing and tolerating well." On January 9, 2003 appellant noted "continuing discomfort in her low back and bilateral lower extremities" which was attributed to "position, much aggravated by standing and/or walking" and "is also aggravated by her work activities."

In an August 14, 2001 MRI scan, Dr. Matthew S. Pollack diagnosed degenerative disc disease at L5-S1, no evidence of a disc herniation and "[e]nhancing soft tissue in the right side of the epidural space, surrounding the S1 nerve root, at L5-S1, consistent with epidural fibrosis."

On January 24, 2003 the Office received an April 24, 2000 report by Dr. Robert A. Morrow, a Board-certified neurological surgeon, and Michael D. Kramer, a physician's assistant. A physical examination revealed a normal gait while ambulating, "[s]light flattening of the normal lumbar curves," soft tissue tense upon palpation, "[m]oderate amount of musculature asymmetry present," and flexion range of motion "limited to 18 inches with no complaints of increased back pains." Based upon a review of an MRI scan and physical and neurological examinations, the physician diagnosed right L5-S1 herniated nucleus pulposus (HNP).

By letter dated January 29, 2003, the Office notified appellant that the evidence submitted was insufficient to establish her claim. The Office advised her about the factual and medical evidence she needed to submit to her claim.

On February 11, 2003 the Office received a January 22, 2003 lumbar myelogram and a January 22, 2003 computerized tomography (CT) scan by Dr. Henry M. Friess, a Board-certified diagnostic radiologist. The myelogram revealed "small anterior extradural defects upon the thecal sac at the L2-3 thru L5-S1 levels" and "no definite cut-off of nerve root sheath filling." The CT scan revealed "mild spinal stenosis at L3-4 thru L5-S1" and "a diffusely bulging disc lies adjacent to" L5-S1, "but does not compress the origins of the S1 nerve roots."

Appellant subsequently submitted unsigned progress notes for February 4, 2003 as well as copies of the January 22, 2003 lumbar myelogram and CT scan by Dr. Friess. The February 4, 2003 progress note stated a review of her myelogram and CT scan demonstrated no "specific nerve root compromise" and "little in the clinically significant canal compromise." It was recommended that appellant be "evaluated by a physiatrist to assist her function capabilities and to make suggestions about possible modifications to her occupational status." Appellant then was released to be seen on an as needed basis in the future.

By decision dated March 5, 2003, the Office denied appellant's claim finding that the evidence of record was insufficient to establish that she sustained an injury in the performance of duty. The Office found the record devoid of any rationalized medical evidence establishing that appellant sustained a condition caused by factors of her employment.

Subsequent to the decision, the Office received a November 12, 2002 MRI scan by a Dr. Greg Harvey and a copy of progress notes dated September 13, 2001 to January 22, 2003. The CT scan revealed L5-S1 mild degenerative disc or facet disease, a "mild annular bulge is present at L5-S1," "minimal epidural granulation tissue" present at the "[r]ight laminotomy defect," the "granulation tissue is contiguous with the mildly enlarged, but nonenhancing right S1 nerve root" and "no evidence of recurrent disc herniation, although mild central canal stenosis is present at this level." Dr. Harvey diagnosed "degenerative disc disease with mild central canal stenosis and right-sided postsurgical changes at L5-S1."

In a letter dated March 13, 2003, appellant, through her attorney, requested an oral hearing, which was held on October 27, 2003.

On May 13, 2003 the Office received medical information regarding appellant's epidural treatment in the year 2000 for her right lumbar radiculopathy and a July 6, 2000 surgical report.

On July 2, 2003 the Office received copies of various medical evidence which included MRI scans dated April 10, 2000, August 15, 2001, November 12, 2002, a July 6, 2000 surgical report, a January 22, 2003 myelogram of the lumbar spine, the April 24, 2000 report by Dr. Morrow and Mr. Kramer, a June 28, 2000 history and physical examination and unsigned progress notes for the period June 13, 2000 through January 22, 2003.

By decision dated January 6, 2004, the Office hearing representative affirmed the March 5, 2003 denial of appellant's claim, finding that she failed to establish that her back condition was causally related to her federal employment as none of the medical evidence addressed the issue of causation.

On February 24, 2004 the Office received a February 19, 2004 investigative memorandum from the employing establishment.

Appellant, through counsel, requested reconsideration in a March 30, 2004 letter and submitted a March 15, 2004 report by Dr. Morrow, who stated that he first saw appellant on April 24, 2000 and that, due to her failure with conservation management, she "underwent surgical intervention for her right-sided L5-S1 discectomy." A physical examination at the initial evaluation revealed "muscular asymmetry secondary to spasm," significantly limited flexion, "bony tenderness at the [L]5-[S]1 level on the right side," her right knee jerk was significantly diminished, a right sided "positive straight leg tension sign at 45 degrees," and "a flattening of her normal lumbar lordotic curvature." The physician stated that "it became apparent" during postoperative conversations "that much of her discomfort had been precipitated by and further perpetuated, by the specific duties that she performed" at the employing establishment. He reported it was not until appellant was returned to the position she held before her surgery "that she had significant exacerbation of pain similar to that of her preoperative syndrome." Subsequent MRI scans, myelograms and CT scans were performed "to determine whether she had a recurrent disc or simply aggravation of the nerve root at the site of her surgery as a result of her occupational duties" and these studies "failed to reveal any new or recurrent surgically remedial pathology. Next, the physician concluded that the time appellant traveled to

and from her employment in an automobile was also a contributing factor to her condition. In concluding, Dr. Morrow stated:"

> "Based upon the information that I have at my disposal at this time, it is my opinion, within a reasonable degree of medical certainty, that the activities [appellant] was required to perform at her place of employment, both prior to her surgical intervention as well as subsequently are major causative factors both in her initial disc herniation and the subsequent nerve root inflammation she experienced. Chronic positioning, particularly while sitting, is well known to clinically aggravate a patient's symptomatology with this pathology. Chronic standing and repetitive lifting and/or lifting and twisting, are also major aggravating factors."

In a decision dated April 15, 2004, the Office denied modification of the January 6, 2004 decision. The Office found Dr. Morrow's report insufficient to support appellant's claim for two reasons: he failed to specifically state whether appellant did in fact perform those job factors and he failed to provide "a discussion of the claimant's specific job duties and how they caused or contributed to her condition."

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that the essential elements of 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, 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.[2] These are essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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;[4] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[5] and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for

[1] 5 U.S.C. §§ 8101-8193.

[2] *Derrick C. Miller*, 54 ECAB ___ (Docket No. 02-140, issued December 23, 2002).

[3] *Janice Guillemette*, 54 ECAB ___ (Docket No. 03-1124, issued August 25, 2003); *Kathryn A. Tuel-Gillem*, 52 ECAB 451 (2001).

[4] *Solomon Polen*, 51 ECAB 341 (2000).

[5] *Marlon Vera*, 54 ECAB ___ (Docket No. 03-907, issued September 29, 2003); *Janet L. Terry*, 53 ECAB __ (Docket No. 00-1673, issued June 5, 2002); *Roger Williams*, 52 ECAB 468 (2001).

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.[6] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.[7]

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.[8] The opinion of the physician must be based on a complete factual and medical background of the claimant,[9] must be one of reasonable medical certainty[10] 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.[11]

ANALYSIS

Appellant has not submitted sufficient medical evidence to establish that her lower back and leg problems were causally related to her employment duties of pushing heavy food carts. 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.[12] 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.[13] Causal relationship must be substantiated by reasoned medical opinion evidence which is appellant's responsibility to submit.

The Board finds that Dr. Morrow's reports do not constitute sufficient medical evidence demonstrating a causal connection between appellant's employment and her lower back and leg conditions as it did not contain a probative, rationalized medical opinion which explains why appellant's claimed conditions were causally related to factors of her employment.[14] In an

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[6] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[7] *Luis M. Villanueva*, 54 ECAB ___ (Docket No. 03-977, issued July 1, 2003).

[8] *Conard Hightower*, 54 ECAB ___ (Docket No. 02-1568, issued September 9, 2003).

[9] *Tomas Martinez*, 54 ECAB ___ (Docket No. 03-396, issued June 16, 2003).

[10] *John W. Montoya*, 54 ECAB ___ (Docket No. 02-2249, issued January 3, 2003).

[11] *Judy C. Rogers*, 54 ECAB ___ (Docket No. 03-565, issued July 9, 2003).

[12] *See Beverly A. Spencer*, 55 ECAB ___ (Docket No. 03-2033, issued May 3, 2004); *Joe T. Williams*, 44 ECAB 518, 521 (1993).

[13] *Id.*

[14] *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value).

April 24, 2000 report, Dr. Morrow diagnosed a right L5-S1 HNP and reported physical findings of a normal gait, "[s]light flattening of the normal lumbar curves," soft tissue tense, limited flexion range of motion and moderate musculature asymmetry. He did not address causation. In a March 15, 2004 report, Dr. Morrow reported physical findings of "muscular asymmetry secondary to spasm," significantly limited flexion, "bony tenderness at the 5-1 level on the right side," her right knee jerk was significantly diminished, a right-sided "positive straight leg tension sign at 45 degrees," and "a flattening of her normal lumbar lordotic curvature." He diagnosed a disc herniation and subsequent nerve root inflammation. Dr. Morrow attributed these conditions generally to her employment activities, which she performed "both prior to her surgical intervention as well as subsequently." His conclusion on causal relationship is of a summary nature as his reports do not contain a medical opinion explaining how appellant's claimed back condition and disability were caused or aggravated by specific factors of her employment. The doctor did not provide a clear opinion as to what appellant's employment activities were or how they contributed to appellant's claimed conditions.

The unsigned reports submitted by appellant do not constitute probative medical evidence as the absence of a signature does not identify the preparer as a physician.[15] The Board finds that these reports are insufficient to establish appellant's claim.

Dr. Harvey's progress notes as well as the results of diagnostic testing failed to address causal relationship.

As appellant has failed to submit probative, rationalized medical evidence establishing that her claimed lower back and leg conditions were caused by factors of her employment, the Board finds that she has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant did meet her burden to establish that her claimed lower back and leg conditions were sustained in the performance of duty.

[15] *See Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 15 and January 6, 2004 are affirmed.

Issued: January 26, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member