U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAWN WILSON and U.S. POSTAL SERVICE,
POST OFFICE, Allen Park, MI

Docket No. 03-1301; Submitted on the Record;
Issued September 17, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment.

On December 6, 2001 appellant, then a 34-year-old mailhandler, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained a back injury as a result of her federal employment and first became aware that it was caused or aggravated by her employment on September 26, 2001. She stopped work on October 1, 2001 and returned to restricted duty on October 6, 2001. Accompanying her claim, appellant included work schedules and disability certificates dating from September 28 to December 28, 2001.[1]

In a letter dated January 8, 2002, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish her claim. Appellant was advised to submit a rationalized statement from her physician addressing the causal relationship between her claimed injury and factors of her federal employment. She was allotted 30 days to submit the requested evidence.

Appellant submitted a December 12, 2001 report from Dr. Adora E. Pacania, a Board-certified family practitioner, who diagnosed low back pain and trapezius muscle spasm. She indicated that appellant had been a postal worker for many years and routinely lifted 70 pounds at work. Dr. Pacania explained that it was unclear whether appellant's occupation caused her condition although the heavy lifting aggravated her low back pain and trapezius muscle spasm. In a form report dated January 16, 2002, Dr. I.K. Yoon, a physiatrist, provided physical restrictions advising that appellant could lift no more than 20 pounds, pushing and pulling was restricted, along with shoveling, stooping, bending and twisting.

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[1] The physicians' signatures were illegible. The reports, however, provided restrictions to appellant's physical activity.

By letter dated January 30, 2002, appellant provided a description of her job duties. In a letter received by the Office on February 14, 2002, the employing establishment provided a description of appellant's regular duty assignment.

By decision dated February 28, 2002, the Office denied appellant's claim, finding that she did not submit sufficient medical evidence to establish that she sustained a back condition in the performance of duty. The Office found that the evidence of file supported that appellant experienced the claimed exposures but that no diagnosis of a condition had been made in connection with it.

By letter dated March 27, 2002, appellant requested a hearing that was held on September 24, 2002.[2] Appellant submitted a March 13, 2002 report from Dr. Yoon who opined that appellant's neck and lower back pain was due to right upper trapezius strain and bilateral sacroiliac sprain. He advised that repetitive lifting, bending, twisting or prolonged sitting to drive a forklift, could aggravate appellant's right upper trapezius strain and bilateral sacroiliac sprain. Dr. Yoon indicated that "[o]bviously, this musculoskeletal problem such as upper trapezius strain and sacroiliac sprain was usually related to activities such as her job description."[3]

By decision dated January 13, 2003, an Office hearing representative modified the February 28, 2002 decision to reflect that the claim was denied on the basis of causal relationship, rather than fact of injury.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[4] 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 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.[5] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

[2] During the hearing, appellant's representative contended that the employing establishment had changed the way they processed mail in the area in which appellant worked, exposing her to an inherent safety problem in terms of altering the lifting technique and to unnecessary risks of back injury.

[3] Appellant filed a notice of recurrence with respect to the occupational disease claim, which was denied.

[4] 5 U.S.C. §§ 8101-8193.

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

[6] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, appellant 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 appellant 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 appellant. The medical evidence required to establish a causal relationship 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 appellant's diagnosed condition and the implicated employment factors. 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.[7]

In this case, appellant has not submitted sufficient medical evidence to establish that her neck and lower back conditions were causally related to her employment.

Appellant provided a December 12, 2001 from Dr. Pacania, who diagnosed low back pain and trapezius muscle spasm which was aggravated by heavy lifting. The Board, however, finds that Dr. Pacania's report was conclusory and speculative in that the physician advised that it was "unclear" whether work factors caused or aggravated appellant's condition. The Board has held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship,[8] and a conclusory statement without supporting rationale is of little probative value, such report is insufficient to discharge appellant's burden of proof.[9]

Dr. Yoon's January 16, 2002 report does not provide a cause of appellant's condition. In the March 13, 2002 report, Dr. Yoon advised that it was obvious that musculoskeletal problems such as appellant's upper trapezius strain and sacroiliac sprain were usually related to activities such as those found in appellant's job description. However, without any further explanation or rationale, such report is insufficient to establish a causal relationship.[10] Additionally, he advised that the repetitive lifting, bending, twisting and the prolonged sitting needed to drive a forklift, "could" aggravate appellant's condition. The Board has held that speculative opinions are of limited probative value.[11]

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[7] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

[8] *See Vaheh Mokhtarians*, 51 ECAB 190, 195 n.8 (1999); *William S. Wright*, 45 ECAB 498, 504 (1994); *Arthur P. Vliet*, 31 ECAB 366 (1979).

[9] *Marilyn D. Polk*, 44 ECAB 673 (1993).

[10] *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

[11] *See* footnote 8.

The Board therefore finds that as appellant did not submit medical evidence to establish that she sustained a back or neck condition causally related to factors of employment, she has failed to meet her burden of proof.[12]

The January 13, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 17, 2003

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[12] The record also contains physical therapy reports. However, health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value. 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).