United States Department of Labor
Employees' Compensation Appeals Board

INGRID B. PHIPPS, Appellant	)	
and	)	**Docket No. 04-88**
	)	**Issued: May 10, 2004**
DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, St. Louis, MO, Employer	)	

Appearances:
Ingrid B. Phipps, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 6, 2003 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated December 23, 2002 and July 29, 2003 which denied her claim for a low back strain. Under 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 has established that she sustained a back injury on June 6, 2000 causally related to her federal employment.

FACTUAL HISTORY

On June 16, 2000 appellant, then a 45-year-old computer operator, filed a claim alleging that on June 6, 2000 she sustained a back injury while performing her regular duties. Appellant claimed that she experienced back and leg pain everyday, and sometimes neck pain, and that she

had constant pain in her stomach and left side when she stood, walked, sat, bent, stooped or lay down. Appellant stopped work on June 6, 2000 and did not return.

By letter dated July 5, 2000, the Office requested further information.

Appellant submitted a June 27, 2000 note from her gynecologist which noted that she was "[s]een by me for probable work-related back injury. Out of work June 6 [to] present. No heavy lifting -- paperwork only."

Appellant also submitted August 17, 1999 reports diagnosing musculoskeletal pain at that time, an August 18, 1999 radiology report and other 1999 medical reports which predated her claimed June 6, 2000 injury. An unsigned preinjury May 30, 2000 medical progress note indicated that appellant was seen complaining of left flank and back pain that she claimed happened at work and not at home. Other preinjury medical progress notes, mostly from the gynecology service, were also submitted.

Appellant submitted several statements beginning July 10, 2000 in which she claimed that she experienced a back injury on June 6, 2000. She implicated frequent movement between equipment, walking, bending, stretching, stooping, lifting, constant standing, loading and unloading paper, and "similar actions" as causative of her back condition. Appellant also implicated carrying boxes of paper, stacks of finished reports, large tapes, and boxes of envelopes, and pushing a roll of paper up a ramp to load a large printer, clearing paper jams in printers and pushing carts and cages. She claimed that she damaged her back on June 6, 2000, tore her stomach muscles in half, and damaged the lower parts of her body, and noted that she had constant pain in her back, in her left lower side, left leg and left foot and stomach when she performed employment-related activities.

Appellant submitted a June 23, 2000 gynecological report noting a normal uterus and a left cystic ovary. She underwent a right oophorectomy in February 2000 for a polycystic ovary.

In a June 27, 2000 medical progress note, a Washington University medical student noted that appellant complained of back pain with shooting pain into her left buttock and leg. The medical student noted that appellant had done "heavy lifting at work on June 6, 2000" and by the next day her pain was too severe to dress herself or take a bath. The student found that appellant had pain in her lower back with change to sitting position, slightly decreased strength in her quadriceps and numbness in her left toes. The student recommended that appellant be on light duty at work.

By letter dated August 1, 2000, the Office advised appellant that it was processing her claim as an occupational disease claim and requested further information regarding the implicated employment factors.

On August 9, 2000 appellant's chiropractor, Dr. Bryan W. Reid, noted that she could return to work but was unable to perform her usual job duties.

On August 11, 2000 appellant alleged that she was unable to perform any type of physical activity due to constant back pain. On August 16, 2000 Dr. Marc C. Hubbard, a chiropractor, noted that appellant "reinjured her back on June 6, 2000 as she attempted to do her job which involved lifting, twisting and bending." Dr. Hubbard noted that x-rays were taken and referred to the radiology report as having the diagnosis. The August 16, 2000 radiology report diagnosed a right cervical tilt with a curve reversal and anterior weight bearing, uncovertebral arthrosis and spondylosis at C4 and C5; spondylosis in the mid thoracic range, and a right lumbar tilt with increased sacral base angle, facet arthrosis at L3-4, spondylosis at L2 and L3 and an anatomic nonpathologic anomly of a lumbosacral transitional segment. The radiologist noted that there was "rotational malposition in the mid [thoracic] region," and that the pelvis and sacrum were rotationally malpositioned.

By decision dated October 25, 2000, the Office denied appellant's claim finding that the medical evidence did not establish the causal relationship of appellant's back condition to the implicated factors of her employment.

In November 2000 appellant requested a review of the written record by the Branch of Hearings and Review.

By decision dated December 23, 2002, an Office hearing representative affirmed the October 25, 2000 decision finding that the gynecological records generally predated June 6, 2000 and did not contain any opinion relating appellant's diagnosed conditions to her employment duties. The hearing representative noted that appellant had a prior August 3, 1999 injury accepted for a low back strain.

By letter dated May 1, 2003, appellant requested reconsideration and submitted additional evidence. In an August 10, 2000 report, Dr. Heidi Prather, an osteopath specializing in physical medicine and rehabilitation, noted that appellant was injured in 1999 while lifting boxes, had an oophorectomy in February 2000, had rectus diaphysis, and was reinjured on June 6, 2000 while lifting boxes at work. Dr. Prather diagnosed L5 versus S1 radicular pain. On May 10, 2001 she noted that appellant had a normal bone scan, a normal magnetic resonance imaging (MRI) scan, and a normal lumbar radiograph (x-ray), but continued to be symptomatic in both lower extremities with pain worse on the left from the posterior buttock into the feet. Dr. Prather diagnosed "rule out clinical radicular pain." On May 22, 2001 he noted that electromyographic (EMG)/nerve conduction studies showed "no electrodiagnostic evidence of lumbar radiculopathy or peripheral neuropathy." On September 10, 2001 Dr. Prather diagnosed left buttocks pain and posterior thigh pain, rule out S1 joint pain. He provided additional reports, none of which diagnosed an employment-related pathology or addressed the causal relation of appellant's conditions with factors of her employment.

In a March 26, 2003 report, Dr. Prather noted that she saw appellant on August 10, 2000 for a diagnosis of L5 and S1 radicular pain. He noted that appellant was injured in 1999 while lifting boxes and had an onset of low back and abdominal pain, and that she had an oophorectomy in February 2000, and she returned to regular-duty work thereafter. Dr. Prather opined:

> "[W]ithin a medical degree of certainty, ... low back conditions such as sacroiliac pain may occur with repetitive lift[ing], bending or twisting. Unfortunately, this diagnosis is clinical, as objective testing is often negative. Certainly, [with] a condition such as this, whether initial cause was or was not related to the one direct activity, certainly repetitive activities requiring lift[ing], push[ing] or pull[ing] can aggravate the sacroiliac pain. ... The activities requiring push[ing], bend[ing], pull[ing] [and] lifting objects 50 pounds or more should aggravate symptoms related to sacroiliac joint pain."

Appellant also submitted a September 20, 2002 decision from the Social Security Administration which found that she was unable to perform her past work but had residual functional capacity to perform a significant range of sedentary work.

By decision dated July 29, 2003, the Office denied modification of the December 23, 2002 decision, finding that Dr. Prather's reports were speculative and that the findings of the Social Security Administration were not binding on the Office.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact that he or she 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]

In the instant case, appellant has established that she is an employee of the United States and that her claim was timely filed. However, she has not established that she sustained an injury in the performance of duty as alleged.

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;[3] (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence

[1] 5 U.S.C. § 8101 *et seq.*

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

[3] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

or occurrence of the disease or condition;[4] 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.[5] 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,[6] must be one of reasonable medical certainty,[7] 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.[8]

ANALYSIS

Appellant did not meet her burden of proof in this case, as she did not submit rationalized medical evidence from a physician to support her claim. Section 8101(2) of the Act[9] defines the term "physician," to include chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[10] Appellant provided treatment notes from her attending chiropractor, Dr. Hubbard, who did not diagnose a spinal subluxation as demonstrated by x-ray to exist. He noted that x-rays were taken but referred generally to the chiropractic radiologist's report for a diagnosis and for further information. As Dr. Hubbard did not diagnose a subluxation as demonstrated by x-ray to exist, he is not considered a "physician" under the Act, and his reports have no probative value.

The chiropractic radiologist read his own x-rays and diagnosed cervical uncovertebral arthrosis and spondylosis at C4 and C5, thoracic spondylosis, and lumbar facet arthrosis at L3-4 and spondylosis at L2 and L3. No spinal subluxations were noted. The radiologist noted that there was "rotational malposition" in the "mid thoracic region," but did not specify the thoracic levels at which any rotational malposition occurred, such that specific vertebral subluxations were not identified. The radiologist also noted that appellant's sacrum and pelvis were rotationally malpositioned. None of the chiropractic evidence submitted demonstrates a

[4] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979).

[5] *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

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

[7] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[9] 5 U.S.C. § 8101(2).

[10] *See* 20 C.F.R. § 10.400(e) (defining reimbursable chiropractic services). *See Marjorie S. Geer*, 39 ECAB 1099, 1101-02 (1988).

diagnosis of a spinal subluxation was demonstrated by x-ray to exist. Therefore, the chiropractic evidence is not considered to be from a physician as defined under the Act, and is of no probative value.

The gynecological reports discussed appellant's abdominal and low back pain complaints, as they related to her cystic ovaries and a February 2000 oophorectomy. However, gynecological reports discussed appellant's abdominal and low back pain symptomatology and did not address any causal relationship to appellant's work. Further, many of the medical notations were made by medical students and were not cosigned by a supervising physician, such that they cannot be considered to be medical evidence.[11] These reports are of diminished probative value.

Dr. Prather, an orthopedist, noted appellant's history of lifting boxes and she diagnosed L5 versus S1 radicular pain, rule out radicular pain, rule out S1 joint pain and left buttocks pain with posterior thigh pain. However, she did not discuss causation or provide any opinion on causal relation to factors of appellant's employment. She provided generalized remarks not specific to appellant's case couched in speculative terms. Dr. Prather opined that, "within a medical degree of certainty," low back conditions such as sacroiliac pain "may occur" with repetitive lifting, etc. Dr. Prather's remarks were couched in speculative terms about what "may occur," and are of diminished probative value.[12] Dr. Prather phrased her remarks in terms of a general application or principle, rather than being specific to appellant's case. Consequently, these remarks are of diminished probative value.[13]

Appellant also submitted the findings and conclusions of a Social Security Administration hearing which found that she was unable to perform her past work but had residual functional capacity to perform sedentary work. The Board notes that this determination is not binding on the Office, nor is it determinative of issues arising under the Act.[14]

CONCLUSION

Appellant has not provided rationalized medical evidence which establishes that her back condition is causally related to specific factors of her federal employment. She has not met her burden of proof.

[11] *See Sheila Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992).

[12] *Jacquelyn L. Oliver*, 48 ECAB 232 (1996); *Brian E. Flescher*, 40 ECAB 532 (1989); *Philip J. Deroo*, 39 ECAB 1294 (1988) ("the etiology of the herniation might have been traumatic," the breast implant "may have ruptured," the condition is "probably" related, is "most likely" related, or "could be" related, are speculative, and therefore are of diminished probative value).

[13] *See Ronald M. Cokes*, 46 ECAB 967 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[14] *See Rodney P. Kephart*, 45 ECAB 893 (19940); *Richard L. Ballard*, 44 ECAB 146 (1992) (the findings of other administrative agencies are not dispositive of claims under the Act.)

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 29, 2003 and December 23, 2002 be and hereby are affirmed.

Issued: May 10, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member