United States Department of Labor
Employees' Compensation Appeals Board

MARY C. SAMUEL, Appellant	)	
and	)	**Docket No. 03-1557**
	)	**Issued: April 14, 2005**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Allen Park, MI, Employer	)	

Appearances:
Mary C. Samuel, pro se
Adam Neufeld, Esq., for the Director

Oral Argument December 9, 2004

DECISION AND ORDER

Before:
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On June 3, 2003 appellant filed a timely appeal of merit decisions of the Office of Workers' Compensation Programs dated September 18, 2002 and March 26, 2003, which denied her claim for injuries sustained in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained disabling left sciatic nerve damage or other injury in the performance of duty causally related to factors of her federal employment.

FACTUAL HISTORY

On September 30, 1998 appellant, then a 49-year-old clerk, filed an occupational disease claim alleging that she sustained disabling left sciatic nerve damage, causally related to factors of her employment. She alleged that she was disabled on March 4, 6 and 11 and April 6 through

22, 1998, due to keying parcels, handling heavy parcels, working loose mail in a hamper and sorting mail.[1]

On April 23, 1998 Dr. Laren Lerner, an osteopathic physician Board-certified in physical medicine and rehabilitation, reviewed appellant's history, performed a physical examination and referred her for diagnostic scans. He opined that she likely had a chronic lumbar myofascial ligamentous strain, left lumbosacral radiculopathy, right foot plantar fasciitis and was status post 1995 crush injury to the right ankle and foot, with a right foot fasciotomy. In subsequent treatment notes, Dr. Lerner addressed lumbar radiculopathy, left sciatica, left hip bursitis, anxiety, stress and chest pain. In a July 7, 1998 letter, he diagnosed left lumbosacral radiculopathy based on electromyography (EMG) test results. He noted a decreased range of motion in the lumbar spine, localized muscle weakness and tenderness and a decreased straight leg raising test with a positive Laseque's test. He claimed that her low back pain originated when appellant twisted her back during the 1995 workplace fall. This back pain gradually worsened because of her altered gait due to her right foot and ankle pain, as well as ensuing workplace injuries. Dr. Lerner referred to a September 1997 work injury appellant sustained while using a hand jack, which caused her to go on temporary light duty and to keying in March 1998, when something shifted in her low back. He reiterated his diagnoses in a February 5, 1999 report.[2]

In a March 26, 1998 report Dr. Walter Everett, an orthopedic surgeon, diagnosed lumbosacral strain. A November 5, 1999 report from Dr. Michael Baghdoian, a Board-certified orthopedic surgeon, diagnosed residuals of lumbosacral arthralgia with L5-S1 radiculopathy, minimal degeneration in the left hip and slight pelvic tilt. A July 24, 2000 report from Dr. Balbir Gandhi, a Board-certified neurologist, diagnosed left lumbar radiculopathy but excluded left sacroiliitis.[3] A June 12, 2000 radiology report indicated no evidence of problems in the sacroiliac joints. In a March 19, 1999 report, Dr. Herman Glass, a chiropractor, diagnosed an acute subluxation complex in the cervical, thoracic and lumbar regions caused by her 1995 workplace fall.[4] He concluded that appellant's back and side pain was traceable to her 1995 injury; he did not refer to her 1998 keying activities.

On June 1, 2000 the Office rejected appellant's claim on the grounds that she had not established an injury arising in the performance of duty.

[1] Appellant stopped work for four weeks due to right lower extremity pain, returned intermittently from April 6 to 22, 1998 and ceased work at the employing establishment completely on December 6, 1998.

[2] Appellant was also referred to Dr. Syed M. Khan, a Board-certified radiologist, who imaged appellant's left side, spine and ankle on May 13, 1998 and concluded that she showed a normal lumbosacral spine, left shoulder joint, left hip and right ankle and foot. The sole concern was minimal degenerative changes in the sacroiliac joints with slightly more on the right side. He noted that appellant's magnetic resonance imaging (MRI) scan on September 28, 1998 was normal.

[3] Sacroiliitis is the inflammation of the left sacroiliac joint.

[4] Radiologic studies were reported as showing multiple cervical subluxations at C2-3 and thoracic subluxations at T4-6.

Appellant requested an oral hearing before an Office hearing representative. On September 29, 2000 the hearing representative set aside the June 1, 2000 decision, finding the case not in posture for decision. He remanded the case to the Office for referral for a second opinion medical examination.

The record reflects that appellant was initially referred to Dr. Gerald F. Robbins, a Board-certified neurologist. He provided several reports based on his examination of appellant. By decision dated February 1, 2001, the Office again denied appellant's claim finding that the medical evidence from Dr. Robbins supported that her claimed conditions were not causally related to factors of her federal employment.

Appellant requested an oral hearing before an Office hearing representative. On June 12, 2001 the hearing representative remanded the case finding that the opinion of Dr. Robbins was equivocal and speculative. The hearing representative noted that, with respect to appellant's work activities on March 4, 6 and 11 and April 6 through 22, 1998, the statement of accepted facts was not consistent with the evidence of record and findings of the hearing representative in the September 29, 2000 decision. That decision directed that the statement of accepted facts should include that appellant keyed parcels without rotation for eight hours per day on March 4, 1998 and four hours a day on March 6 and 11, 1998 using primarily the left side of her body to push parcels while keying with her right hand. The hearing representative noted that appellant also implicated the assignment she worked from April 6 to 22, 1998, which involved sitting on a hard plastic chair working loose mail out of a hamper and sorting mail into all purpose containers. Additionally, appellant alleged that her August 8, 1995 injury, where she fell between the loading dock and a truck, forced her to overuse her left leg and she implicated a nonemployment-related motor vehicle accident occurring on November 14, 1999 as aggravating her condition.

On remand, the statement of accepted facts was modified and MRI scan reports of September 1998 and February 2000 obtained for the record. Appellant was referred to Dr. John Corbett, a Board-certified orthopedic surgeon, for a second opinion examination.

In a September 19, 2001 report, Dr. Corbett reviewed appellant's factual and medical history and noted his findings upon examination. He found that the cervical spine and upper extremity ranges of motion were normal and asymptomatic, her lower spine movements were slightly restricted and that there was tenderness over the lowest three joints of the spine and in the coccyx region. Appellant exhibited tenderness over both posterior iliac spines in the back of each hip, left greater than right and tenderness over both trochanters of each hip. Dr. Corbett noted that straight leg raising in the sitting position was normal, which tended to rule out any radiculopathy and that straight leg testing in the supine position was performed to 60 degrees on each side with a negative Laseque's test. He found that hip motion was normal, although there was slight discomfort with passive rotation which seemed worse on the right than the left and that all reflexes were present and equal bilaterally.

Dr. Corbett found that appellant's neurological examination of the lower extremities was normal, but she told him that her right leg felt different than the left, but she could not explain the difference. He diagnosed an injury to the right leg involving ankle, calf, knee and thigh occurring in 1995; considerable improvement in right ankle following surgery, with slight

atrophy of right calf; complaints of pain in back and left leg following very heavy work in 1998; possible mild left sciatica aggravated by auto accident on November 14, 1999. Dr. Corbett opined that the November 14, 1999 motor vehicle accident made appellant's spinal problems considerably worse.

Thereafter, Dr. Corbett was requested to clarify his opinion as to whether the physical requirements of appellant's various work assignments, as detailed in the statement of accepted facts, resulted in a disabling back condition for any period from 1998 to the present. He was advised, if his answer was "yes," to discuss whether as of the date of his examination there were any remaining residuals of an employment-related back condition. Dr. Corbett was requested to include the November 14, 1999 automobile accident in his consideration and to indicate whether the back complaint worsened significantly following the automobile accident.

In a November 13, 2001 supplemental report, Dr. Corbett reviewed appellant's job duties, the results of his physical examination and the results of both MRI scans, which he opined were essentially the same. He noted that the diagnosis of pain in the back and left leg in 1998 was based on subjective complaints without any objective findings. Dr. Corbett further noted that the November 14, 1999 automobile accident was a rear-end collision and he expected that her symptoms would have been slightly aggravated. He opined that it did not appear that appellant had a significant back condition from 1998 until the present. Dr. Corbett diagnosed as follows: injury to the right leg and foot occurring in 1995; substantial improvement in the right ankle following surgery; complaints of pain in the back and leg following the 1998 work activities, complaints of pain in the back and left leg following the 1998 work activities; and possible mild left sciatica aggravated by the nonemployment related rear-end car collision in 1999.

Following a further request for clarification, Dr. Corbett opined in a November 13, 2001 addendum, that appellant did not appear to have a significant back condition. He indicated that he based his diagnosis on subjective comments from appellant, without objective finding to correlate significant disability. Dr. Corbett also concluded that appellant's symptoms were not caused by employment factors in March and April 1998, but rather were caused by her off-duty motor vehicle accident in 1999. This opinion was based on MRI scan results showing identical findings of minimal bulging at L4-5 and L5-S1.

By decision dated September 18, 2002, the Office determined that the medical evidence of record failed to support that appellant sustained any disabling low back condition resulting from work activities in March 1998.

Appellant disagreed and requested a review of the written record.

By decision dated March 26, 2003, a hearing representative affirmed the Office's September 18, 2002 decision, finding that the weight of the medical evidence rested with Dr. Corbett.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of her claim.[5] In order to establish causation for an occupational disease claim, the claimant must submit medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed.[6] To be of probative value to an employee's claim, the physician's opinion must contain rationale for the conclusions reached.[7] The opinion must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate factual and medical background.[8] Medical reports based on an incomplete or inaccurate history are of diminished probative value.[9]

Chiropractors are considered to be physicians "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] Where x-rays do not demonstrate a subluxation, a chiropractor is not considered to be a physician and his reports cannot be considered as competent medical evidence under the Act.[11] A chiropractor's report is not competent medical evidence on the issue of disability related to conditions other than a spinal subluxation.[12]

ANALYSIS

The Board finds that appellant has not established that she sustained injuries in her federal employment based on the duties she performed on March 4, 6 and 11 and April 6 to 22, 1998. She has not submitted sufficient rationalized medical evidence supporting causation between her work duties in March and April 1998 and any disabling back, left hip or left leg conditions.

Appellant originally sustained a right sided lower extremity crush injury from a fall between a truck and loading dock while at work on August 9, 1995. Her condition was accepted

---

[5] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); 20 C.F.R. § 10.110.

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

[7] *Michael Stockert*, 39 ECAB 1186 (1988).

[8] *See Samuel Senkow*, 50 ECAB 370 (1999); *Judith J. Montage*, 48 ECAB 292 (1997).

[9] *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

[10] 5 U.S.C. § 8101 (2); *Linda Thompson*, 51 ECAB 364 (2000).

[11] *Susan M. Herman*, 35 ECAB 669 (1984).

[12] *See e.g., Phyllis F. Cundiff*, 52 ECAB 439 (2001); *George E. Williams*, 44 ECAB 530 (1993); *Jack B. Wood*, 40 ECAB 95 at 109 (1988).

for right thigh crush injury with hematoma, acute thrombophlebitis and right plantar fasciitis. She underwent right foot surgery in 1997 and received a schedule award for a four percent permanent impairment of her right lower extremity. She returned to work restrictions on light duty.

Appellant claimed that she performed duties on the dates described and stopped work, claiming left sciatica due to left lower back injury. She claimed that her prior right lower extremity condition caused her to favor the right leg and overuse the left hip and leg, which tilted the left hip and pelvis and aggravated her left lower extremity sciatica.

In support of her claim, appellant submitted the reports of Dr. Lerner, who diagnosed chronic lumbar myofascial ligamentous strain, left lumbosacral radiculopathy, right foot plantar fasciitis, status post 1995 crush injury and a right fasciotomy. He stated that he based these diagnoses on appellant's subjective complaints. However, in his various reports, Dr. Lerner did not provide a specific description of the employment activities to which appellant has attributed her physical conditions. Dr. Lerner opined that the diagnosis of left lumbosacral radiculopathy was based on EMG testing, decreased range of lumbar spinal motion, localized muscle weakness and tenderness and decreased straight leg raising test with a positive Laseque's test. However, he did not explain how appellant's findings on physical examination or diagnostic testing were causally related to the job duties she performed. Dr. Lerner did not provide a medical opinion explaining how appellant's conditions were caused or aggravated by her federal employment. He noted, generally, a history of her fall in 1995, to which he attributed her low back pain, which worsened due to an altered gait. Dr. Lerner also noted a history of a 1997 hand jack injury. Although he concluded that her back pain was aggravated while keying in March 1998, he did not provide a sufficient explanation for reaching this conclusion on causal relation. To be of probative value, a physician's opinion on the causal relationship between a claimant's disability and specific employment factors is not dispositive simply because it is rendered by a physician.[13] To be of probative value to an employee's claim, the physician must provide a well-reasoned explanation for the opinion reached. The Board finds that the reports of Dr. Lerner are not well rationalized and, therefore, are of diminished probative value.

The Board notes that the additional reports submitted from Dr. Everett, who diagnosed a lumbosacral strain; Dr. Bagdoian, who diagnosed residuals of arthralgia with L5-S1 radiculopathy; and Dr. Gandhi, who diagnosed left lumbar radiculopathy; are similarly deficient as these physicians did not provide a medical opinion based on a complete and accurate factual and medical background. The reports did not address appellant's employment-related job activities or provide any opinion relating the findings to her federal employment. The report of Dr. Glass, a chiropractor who noted multiple subluxations, is not probative as medical evidence in this claim. The chiropractor went on to address lumbar, lumbosacral and sacroiliac strains; however, the Act limits recognition of a chiropractor as a physician to treatment of spinal

[13] *See Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

subluxations of the spine.[14] To the extent he attributed conditions and disability to other disorders of the lower back or extremities, his opinion is not competent medical evidence.[15]

The Board finds that the weight of medical opinion is represented by the report of Dr. Corbett. Appellant was referred to the physician, together with an amended statement of accepted facts and results from diagnostic testing. Dr. Corbett examined appellant on September 10, 2001 noted her subjective symptoms, conducted testing of her lower extremities and found that she had a normal sitting straight leg raising test, which tended to rule out any symptoms of radiculopathy. He reported a largely normal physical examination, except for some tenderness in the hip and spine, minimal restriction of lumbar spine movement and approximately 60 pounds of extra weight. Appellant's legs showed a normal neurological pattern and were of equal length and that performed normally in seated straight leg raising and the Flip test, which lead him to conclude that radiculopathy could be ruled out. Dr. Corbett diagnosed a right leg injury occurring in 1995, substantial improvement in the right ankle following surgery and noted her complaints of back pain following the 1998 work activities and possible mild left sciatica. He provided a supplemental report, noting that appellant did not appear to have a significant back condition. He stated that the support for her back condition were her subjective complaints but there were no objective findings of significant disability. Dr. Corbett concluded that any symptoms appellant might be having were not caused by her employment factors in March and April 1998, but due to a nonemployment-related automobile accident in 1999. Dr. Corbett based this conclusion on a comparison of the MRI scan from September 1998 and February 2000.

The Board finds that appellant has failed to establish that she sustained a disabling injury in the performance of duty, causally related to factors of her employment in March and April 1998. The weight of the medical evidence in this case rests with the report of Dr. Corbett, who based his opinion of a complete and accurate factual and medical background. He had the opportunity to review the complete medical record and an amended statement of accepted facts, which described appellant's general work duties as well as her specific activities in March and April 1998. He was provided a history of the 1995 injury, such that causation could be explored. Dr. Corbett thoroughly examined appellant, found that her legs showed a normal neurological pattern and explained the anatomical testing involved upon which he based his medical conclusions. The opinion of Dr. Corbett is well rationalized and constitutes the weight of medical opinion.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a disabling injury in the performance of duty, causally related to factors of her employment in March and April 1998.

[14] 5 U.S.C. § 8101(2).

[15] *See Pamela K. Guesford*, 53 ECAB 726 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation dated March 26, 2003 and September 18, 2002 be affirmed.

Issued: April 14, 2005
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member