

**United States Department of Labor
Employees' Compensation Appeals Board**

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CAROLL S. WILDE, Appellant)	
)	
and)	
)	Docket No. 05-295
)	Issued: April 18, 2005
U.S. POSTAL SERVICE, MAIN POST OFFICE, Salt Lake City, UT, Employer)	
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Appearances:
Caroll S. Wilde, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 15, 2004 appellant filed a timely appeal of an August 17, 2004 merit decision of the Office of Workers' Compensation Programs that found that the medical evidence did not establish causal relation of the diagnosed condition to an accepted employment incident. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant sustained a medical condition causally related to an August 1, 2003 employment incident.

FACTUAL HISTORY

On August 1, 2003 appellant, then a 60-year-old mail processor, filed a claim for compensation for a traumatic injury to her low back sustained that day when she twisted her back

sweeping the bottom rack of a stacker.¹ A witness stated that she saw appellant slowly coming up after sweeping the bottom tier of a stacker, that she sat on the bottom tier holding her back in pain, that she asked appellant if she was all right and that she answered, give me a couple of minutes.

In an August 1, 2003 report Gary Heaston, a physician's assistant, diagnosed a lumbar sprain, indicated this condition was the result of her sweeping at work and stated that she could perform work involving no lifting over two pounds. In an August 13, 2003 letter, the Office requested that appellant have medical reports countersigned by a physician.

Appellant submitted an August 1, 2003 report over the names but not signatures of Mr. Heaston and Dr. Mark V. Anderson, a specialist in occupational medicine, containing a history that she was bent over sweeping a machine for a few minutes, tried to stand back up and had sudden low back pain in the central lowest lumbar area. Acute lumbar pain was diagnosed and ice, rest and home exercises were prescribed. In an August 2, 2003 report of an emergency room visit, Dr. Mansoor Emam, a Board-certified internist, set forth a history of an injury the previous night when she bent over to move some mail into a tray, felt immediate pain in her low back and was not able to stand up. X-rays showed evidence of degenerative disc disease, back pain was diagnosed and five days off work recommended. An August 8, 2003 report over the names but not signatures of Mr. Heaston and Dr. Deborah Teynor, who is Board-certified in occupational medicine, stated that appellant was seen "to follow up her lumbar pain and her herniated nucleus pulposus which occurred on August 1, 2003." This report stated that a magnetic resonance imaging (MRI) scan showed a disc herniation and diagnosed "lumbar pain in her HNP [herniated nucleus pulposus]." An August 13, 2003 report of appellant's work tolerance limitations from Dr. Terry Sawchuk, a Board-certified physiatrist, described the injury as having occurred when sweeping the lower row of a machine and listed the diagnosis due to injury as herniated nucleus pulposus, lumbar disc.

By decision dated September 17, 2003, the Office found that the evidence supported that the claimed event occurred, but that there was no medical evidence providing a diagnosis that could be connected to the incident.

On November 4, 2003 appellant requested reconsideration and submitted additional evidence. In an August 13, 2003 report, Dr. Sawchuk set forth a history that on August 1, 2003 appellant was moving trays of mail and felt immediate and severe lower back pain while bending forward and twisting. After describing appellant's findings on examination and on an August 5, 2003 MRI scan, Dr. Sawchuk diagnosed lumbar disc protrusion and lumbar degenerative disc disease and stated that the L4-5 protrusion may be the cause of her symptoms, though she did not have any real radicular symptoms and no neurological deficits. In August 20, September 10 and October 8, 2003 reports, Dr. Sawchuk indicated that appellant was still restricted to modified duty.

¹ Appellant listed the date of the injury and of her claim form as September 1, 2003, but the employing establishment reported that she gave notice of an August 1, 2003 injury on August 1, 2003.

By decision dated February 18, 2004, the Office accepted the fact of injury component but denied appellant's claim because she had not established that her injury occurred in the performance of duty.

In a March 31, 2004 letter, appellant contended that the evidence was sufficient to establish her claim. She submitted reports of her work tolerance limitations from Dr. Sawchuk dated December 3, 2003 and January 13, 2004, which listed the diagnosis due to injury as lumbar disc protrusion. She also submitted the employing establishment's August 2, 2003 accident report, a copy of the August 5, 2003 MRI scan, an August 8, 2003 report of her work tolerance limitations signed by Dr. Letitia Archuleta, who is Board-certified in occupational medicine, which listed the diagnosis due to injury as lumbar disc herniation and a May 25, 2004 note from Dr. Anderson stating only "lumbar strain."

By decision dated August 17, 2004, the Office found that the evidence established that appellant was in the performance of duty at the time of the August 1, 2003 incident, but that the medical evidence did not establish causal relation of the diagnosed conditions to the reported mechanism of injury.

LEGAL PRECEDENT

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that her condition was caused or adversely affected by her employment. As part of this burden she must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.² Causal relationship is a medical question that can be established only by medical evidence.³ Medical evidence lacking proper identification may not be considered probative medical evidence.⁴

ANALYSIS

The evidence establishes that appellant twisted her back on August 1, 2003 while sweeping mail. However, this is not sufficient to establish that she is entitled to compensation under the Federal Employees' Compensation Act. As noted above, appellant's burden of proof includes the submission of rationalized medical evidence showing causal relation.

The August 1, 2003 report from Mr. Heaston, cannot be considered medical evidence because a physician's assistant is not a "physician" as defined by section 8101(2) of the Act.⁵

² *Froilan Negron Marrero*, 33 ECAB 796 (1982).

³ *Ausberto Guzman*, 25 ECAB 362 (1974).

⁴ *Merton J. Sills*, 39 ECAB 572 (1988).

⁵ 5 U.S.C. § 8101(2); *Ricky S. Storms*, 52 ECAB 349 (2001).

The August 1 and 8, 2003 reports over the names of Mr. Heaston and Drs. Anderson and Teynor, also cannot be considered medical evidence. As these reports are not signed by physicians, the Board cannot ascertain whether they were prepared by the physician's assistant or the physician. The August 2, 2003 report of Dr. Emam diagnosed back pain, which is a symptom, not a condition and did not submit any statement on causal relationship.

Appellant did submit medical evidence, namely reports from Dr. Sawchuk and Dr. Archuleta, that listed the diagnosis due to injury as lumbar disc protrusion, herniated nucleus pulposus or lumbar disc herniation. None of these reports, however, contain any rationale explaining why either physician believed appellant's herniated or protruding disc was causally related to the August 1, 2003 employment incident. The May 25, 2004 note from Dr. Anderson stated only "lumbar sprain" and is the only medical report containing this diagnosis. He did not relate this condition to the August 1, 2003 employment incident.

CONCLUSION

The Board finds that the medical evidence is insufficient to meet appellant's burden of proving she has a medical condition causally related to an August 1, 2003 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 17 and February 18, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 18, 2005
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member