United States Department of Labor
Employees' Compensation Appeals Board

P.M., Appellant	)	
and	)	**Docket No. 06-1781**
	)	**Issued: November 8, 2006**
U.S. POSTAL SERVICE, BULK MAIL CENTER, Atlanta, GA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 21, 2006 appellant filed a timely appeal from a November 8, 2005 merit decision of the Office of Workers' Compensation Programs which denied her claim and a March 8, 2006 decision which denied her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an employment-related injury on August 29, 2005; and (2) whether the Office properly refused to reopen her claim for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On September 4, 2005 appellant, then a 50-year-old custodian, filed a Form CA-1, traumatic injury claim alleging that on August 29, 2005 she sustained a lower back injury when she picked up "mail and boxes from the floor." She stopped work that day. The employing establishment controverted the claim. In an August 10, 2005 employing establishment nursing

note, appellant's physician had advised that she should restrict her physical activity for three weeks to no lifting over five pounds. An October 3, 2005 note advised that her physician recommended that she be on permanent light duty of no lifting over 15 pounds and no mopping. The nurse noted that she would return to work on October 1, 2005.

By letter dated September 30, 2005, the Office informed appellant of the evidence needed to support her claim. In an attending physician's report dated September 30, 2005, Dr. Kevin Greenwell, a family physician, noted that appellant sustained a severe muscle sprain while in the military and had reinjured her back at work. Lumbar disc disease and arthritis were diagnosed and the "yes" box was checked, indicating that the conditions were employment related, with the appended statement "Desert Storm veteran." The form indicated that appellant was excused from work for 30 days and also stated that she could return to light duty on September 1, 2005 with restrictions of no lifting or mopping.

In an undated statement, Frank D. Brown and James H. Hurt, coworkers, advised that late in August appellant requested assistance and they had found her in extreme pain in the ladies locker room. They helped her get up and she was subsequently able to move around on her own.

A magnetic resonance imaging (MRI) scan of the lumbar spine dated August 15, 2005 demonstrated mild developmental stenosis at L4-5 and L5-S1 with no evidence of definite root compression. There was some crowding of stenotic segments with no disc herniation and minimal bulging at L4-5. Disability slips indicated that on October 25, 1999 appellant could return to light work with a 20-pound lifting restrictions that she underwent medical care on August 11, 2005 and was under medical care from August 31 to September 30, 2005, but could return to work on October 1, 2005. On October 3, 2005 Dr. Greenwell's office advised that appellant had a 15-pound lifting restriction. A health unit nurse reported that she could return to work on October 15, 2005.

In an October 24, 2005 duty status report, Dr. Greenwell noted clinical findings of tenderness of the lumbar spine and diagnosed aggravation of previous problem, lumbar disc disease. He stated that the injury occurred when appellant lifted a hamper to dump trash and advised that she could return to light duty on September 30, 2005 with a 5- to 15-pound lifting restriction and kneeling limited to 1 hour, bending/stooping and twisting to 2 hours per day and pulling/pushing to 4 hours per day.

By decision dated November 8, 2005, the Office found that the August 29, 2005 lifting incident occurred, but denied the claim, finding the medical evidence insufficient to establish fact of injury. On January 1, 2006 appellant requested reconsideration and submitted duplicates of evidence previously of record. In a September 6, 2005 report, Dr. Greenwell's office advised that appellant had a history of chronic lumbar arthritis and disc disease since Operation Desert Storm. On December 8, 2005 the employing establishment rescinded appellant's limited duty and advised her of the requirements for light duty. In a March 8, 2006 decision, the Office denied her reconsideration request.

LEGAL PRECEDENT -- ISSUE 1

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 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[2]

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[3] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[4]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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, 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 the claimant.[6] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[7]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling*, 52 ECAB 278 (2001).

[3] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004).

[4] *Gary J. Watling*, *supra* note 2.

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[6] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[7] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Under the Act, the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act.[8] Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence.[9]

ANALYSIS -- ISSUE 1

The Board notes that the lifting incident of August 29, 2005, is not contested. However, appellant did not submit sufficient medical evidence to establish that her back condition or disability were causally related to the lifting incident.

The relevant medical evidence consists of several reports from Dr. Greenwell, appellant's attending physician. His report dated September 30, 2005 is not sufficient to establish the claim. Dr. Greenwell advised that the diagnosed conditions of lumbar disc disease and arthritis were caused by military service in Desert Storm and merely stated that appellant reinjured her back at work. He did not provide a further explanation of the history or how the lifting incident contributed to her preexisting condition. The report also contained inconsistent dates regarding disability as in one place on the form report, it stated that appellant could return to work on September 1, 2005 yet in another that she was excused from work for 30 days. In an October 24, 2005 duty status report, Dr. Greenwell reported a history that appellant injured her back while lifting a hamper and diagnosed "aggravation of a previous problem." The employing establishment noted that appellant was on light-duty restrictions with a five-pound lifting limit at the time of the claimed injury. Furthermore, disability slips and employing establishment nurse notes indicated that she was treated for a back condition earlier in August 2005 and, had an MRI scan on August 15, 2005.

The medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty. The opinion, however, cannot be speculative or equivocal. The opinion of a physician supporting causal relationship 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 medical and factual background of the claimant.[10] In this case, appellant submitted no such evidence. While Dr. Greenwell initially advised that her back problem was caused by activities in the military and aggravated by work, this opinion is too general in nature to support appellant's claim as it contains no affirmative evidence explained by medical rational

[8] *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[9] *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[10] *Patricia J. Glenn*, 53 ECAB 159 (2001).

that the condition was employment related.[11] Although he later stated that her condition was caused by lifting a hamper, this history of injury is not consistent with that reported by appellant on her claim form when she stated that she was lifting mail and boxes from the floor. She was also on a five-pound lifting restriction. Medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.[12] Appellant, therefore, did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.[13] Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.[14] Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[15] Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.[16] Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[17]

ANALYSIS -- ISSUE 2

In her form requesting reconsideration, appellant merely checked that she was requesting reconsideration. She, therefore, did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[18]

With respect to the third above-noted requirement under section 10.606(b)(2), appellant submitted no competent additional medical evidence and the merit issue in this case is whether

[11] *Id.*

[12] *Frank Luis Rembisz*, 52 ECAB 147 (2000).

[13] 5 U.S.C. § 8128(a).

[14] 20 C.F.R. § 10.606(b)(2).

[15] 20 C.F.R. § 10.608(b).

[16] *Helen E. Paglinawan*, 51 ECAB 591 (2000).

[17] *Kevin M. Fatzer*, 51 ECAB 407 (2000).

[18] 20 C.F.R. § 10.606(b)(2).

she established that she sustained an employment-related back condition. This requires the submission of medical evidence establishing that the claimed condition is causally related to the employment factors identified by the claimant.[19] With her reconsideration request, appellant submitted duplicates of evidence previously of record and evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[20] Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[21]

Appellant submitted reports from Dr. Greenwell's office dated September 6 and December 1, 2005. However, these reports are largely duplicative of the physician's prior reports. Appellant, therefore, did not submit relevant and pertinent new evidence not previously considered by the Office and it properly denied her reconsideration request.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a back condition in the performance of duty causally related to factors of employment. The Board further finds that the Office properly refused to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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

[20] *Freddie Mosley*, 54 ECAB 255 (2002).

[21] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 8, 2006 and November 8, 2005 be affirmed.

Issued: November 8, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board