United States Department of Labor
Employees' Compensation Appeals Board

C.A., Appellant	)	
and	)	**Docket No. 06-1334**
	)	**Issued September 27, 2006**
DEPARTMENT OF AGRICULTURE, FOOD SAFETY & INSPECTION SERVICE, Minneapolis, MN, Employer	)	

Appearances:
Blaine C. Stevens, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 11, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated May 11 and July 27, 2005 denying her traumatic injury claim. Pursuant to 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 sustained a traumatic injury on October 25, 2004 causally related to factors of her federal employment.

FACTUAL HISTORY

On October 25, 2004 appellant, a 50-year-old food inspector, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a neck injury when she hit her head on a guide post at the employing establishment.

In support of her claim, appellant submitted a variety of documents, including a work excuse dated November 1, 2004 signed by R. Booth, a licensed practical nurse, which provided a diagnosis of neck trauma and indicated that appellant was unable to work from October 26 through November 1, 2004. Appellant provided a November 8, 2004 report of a cervical myelogram; an October 26, 2004 report of an x-ray of the cervical spine; epidurogram reports and procedure notes dated November 19 and December 3, 2004 and signed by Dr. David P. Herrick, a treating physician, reflecting that appellant received cervical steroid injections on those dates. Dr. Herrick provided a preoperative diagnosis of cervical degenerative disc disease and an impression of buckling of the posterior longitudinal ligament at C5-6, C6-7 and C7-T1. He stated that there were no previous films available for comparison. An emergency outpatient record, bearing an illegible signature, provided an illegible diagnosis, but indicated that appellant had undergone two neck surgeries in the past. A November 10, 2004 prescription for physical therapy, bearing an illegible signature, provided a diagnosis of cervical radiculitis. The record also contains therapy progress notes bearing illegible signatures for the period November 22 through December 6, 2004. On December 15, 2004 appellant filed a claim for benefits for the period December 9 through 25, 2004.

On December 9, 2004 the Office notified appellant that the evidence submitted was insufficient to establish her claim and advised her to provide additional documentation, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. On January 6, 2005 the Office informed appellant that the evidence submitted was insufficient to establish that she was totally disabled from December 9 through 25, 2004 and advised her to submit additional evidence in support of her claim within 30 days.

By decision dated January 12, 2005, the Office denied appellant's claim on the grounds that the evidence failed to establish that the claimed medical condition was causally related to the accepted work-related incident. Specifically, the Office found that appellant had not provided a doctor's report containing a reasoned medical opinion on the relationship between her diagnosed cervical radiculitis and cervical degenerative disc disease and any employment incident.

On March 21, 2005 appellant submitted a request for reconsideration. In support of her request, appellant submitted reports and notes dated January 10, February 10 and 14, and March 14 and 18, 2005 from Dr. Patrick G. Ryan, a Board-certified neurological surgeon. On January 10, 2005 Dr. Ryan stated that appellant continued to "have problems, primarily with her neck." A February 10, 2005 duty status report reflected a diagnosis of cervical radiculopathy. On February 14, 2005 Dr. Ryan indicated that appellant had "injured herself on the job on October 25, 2004 when she walked into a guide bar and hit her head." He noted that "this did stretch her neck" and "caused cervical radicular symptoms." Dr. Ryan noted that appellant had undergone cervical spine operations in 1998 and 2001. He reported that a November 2004 myelogram demonstrated a mild bulging disc at C4-5 with postoperative fusion changes at C5-7. In a March 14, 2005 attending physician's report, Dr. Ryan provided a diagnosis of "C5-6 and C6-7 disc herniations requiring two separate operations." Noting that appellant's latest injury occurred at work on October 24, 2004 he stated that he felt she was "partially disabled" at that time and that her condition was permanent. Dr. Ryan also stated that appellant had been totally disabled from September 10 through December 31, 2002. On March 18, 2005 he stated that

appellant "reinjured herself" at work on October 25, 2004 and had been under his care since approximately November 10, 2004. Dr. Ryan noted that appellant had undergone anterior cervical fusion in September 2002 for disc herniation. The record also contains physical therapy progress notes from December 2 through 22, 2004; an initial physical therapy evaluation reflecting appellant's history of cervical surgeries in 1998 and 2001; and a March 14, 2005 work excuse bearing an illegible signature.

In a statement dated January 11, 2005, appellant reiterated the history of her October 25, 2004 injury, indicating that she hit her head on a guide bar, which "snatched her head backward and then back into a forward motion."

In a decision dated May 11, 2005, the Office denied appellant's request for modification of its January 12, 2005 decision, finding that the evidence submitted did not establish a causal relationship between her current condition and the established October 25, 2004 work-related incident. The Office stated that there was no clear rationalized opinion to explain if appellant's preexisting cervical condition was related to the employment injury by direct causation, precipitation, aggravation or acceleration.

On July 2, 2005 appellant again requested reconsideration. In support of her request, appellant submitted a June 27, 2005 attending physician's report from Dr. Ryan reflecting a diagnosis of cervical radiculitis and C5-7 mild bulge. In response to the question as to whether appellant's condition was caused or aggravated by an employment activity, Dr. Ryan placed a checkmark in the "yes" box. He further stated that appellant was totally disabled from December 25, 2004 through June 27, 2005. In an accompanying June 27, 2005 duty status report, Dr. Ryan stated that appellant could return to work on June 27, 2005 with restrictions. Appellant also submitted an unsigned procedure note from Dr. Herrick reflecting that she had received a cervical steroid injection on June 6, 2005.

In a July 27, 2005 decision, the Office denied modification of its previous decisions, on the grounds that appellant had failed to establish a causal relationship between her diagnosed conditions and the established work-related events.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of the 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 or specific condition for which compensation is claimed is causally related to the employment injury.[1] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," namely, she must submit sufficient evidence to establish that she

[1] *Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.[2]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[3] Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[4]

An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[5]

ANALYSIS

The Office accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits, and that the workplace incident occurred as alleged. The issue, therefore, is whether she has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated any particular medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

The record contains numerous reports from Dr. Ryan. On January 10, 2005 Dr. Ryan stated that appellant continued to "have problems, primarily with her neck." A February 10, 2005 duty status report reflected a diagnosis of cervical radiculopathy. Because these reports fail to provide an opinion as to causal relationship, they are of diminished probative value. The

[2] *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[3] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[4] *John W. Montoya*, 54 ECAB 306 (2003).

[5] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[6]

On February 14, 2005 Dr. Ryan indicated that appellant had "injured herself on the job on October 25, 2004, when she walked into a guide bar and hit her head." He noted that "this did stretch her neck" and "caused cervical radicular symptoms." Noting that appellant had undergone cervical spine operations in 1998 and 2001, Dr. Ryan reported that a November, 2004 myelogram demonstrated a mild bulging disc at C4-5 with postoperative fusion changes at C5-7. Although Dr. Ryan opined that appellant's work injury caused her cervical radicular symptoms, he offered no explanation as to exactly how the mechanism of injury resulted in a specific diagnosed condition. Moreover, he failed to address the relationship between appellant's current condition and her 1998 and 2001 surgeries. His opinion, without explanation, is of diminished probative value.[7]

Dr. Ryan's March 14, 2005 attending physician's report also lacks probative value. Although he provided a diagnosis of "C5-6 and C6-7 disc herniations requiring two separate operations," and noted that appellant's "latest injury occurred at work on October 24, 2004," he provided no explanation as to how the stated injury caused the diagnosed condition. In his March 18, 2005 report, Dr. Ryan stated that appellant "reinjured herself" at work on October 25, 2004 and had been under his care since approximately November 10, 2004. He noted that appellant had undergone anterior cervical fusion in September 2002 for disc herniation. This report lacks probative value in that it fails to provide a diagnosis or any explanation as to the cause of appellant's condition. In a June 27, 2005 attending physician's report, Dr. Ryan diagnosed cervical radiculitis and C5-7 mild bulge. In response to the question as to whether appellant's condition was caused or aggravated by an employment activity, he placed a checkmark in the "yes" box. A mere checkmark or affirmative notation in response to a form question on causal relationship is not sufficient to establish a claim.[8] Dr. Ryan's blanket assertion that appellant's condition was related to the employment injury is not sufficient to establish a causal relationship. He has failed to explain how appellant's condition is physiologically related to the October 25, 2004 employment injury or to provide medical evidence of bridging symptoms between her current condition and the accepted injury which support the conclusion of a causal relationship.[9]

Reports from Dr. Herrick lack any opinion on causal relationship and are, therefore, of diminished probative value.[10] In his November 19, 2004 epidural report, Dr. Herrick noted

[6] *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *See Brenda L. DuBuque*, 55 ECAB ___ (Docket No. 03-2246, issued January 6, 2004); *see also David L. Scott*, 55 ECAB ___ (Docket No. 03-1822, issued February 20, 2004); *Willa M. Frazier*, 55 ECAB ___ (Docket No. 04-120, issued March 11, 2004); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

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

[9] *Mary A. Ceglia*, 55 ECAB ___ (Docket No. 04-113, issued July 22, 2004).

[10] *See Michael E. Smith*, *supra* note 6.

buckling of the posterior longitudinal ligament at C5-6, C6-7 and C7-T1, and indicated that no previous films were available for comparison. In an accompanying procedure note, Dr. Herrick offered a preoperative diagnosis of degenerative disc disease. He provided no opinion as to the cause of appellant's condition. However, a diagnosis of degenerative disc disease, by definition, does not support the occurrence of a traumatic injury. Similarly, Dr. Herrick's procedure notes and epidural reports dated December 3, 2004 and June 6, 2005 lack any discussion of causal relationship, but merely reiterate the diagnosis of degenerative disc disease.

Appellant submitted work excuses signed by a licensed practical nurse and therapy progress notes signed by physical therapists. As licensed practical nurses and physical therapists do not qualify as "physicians" under the Act, their opinions are of no probative value.[11] Reports submitted by appellant that were unsigned or that bore illegible signatures, such as the October 26, 2004 emergency outpatient record, cannot be considered as probative medical evidence, in that they lack proper identification.[12] The remaining medical evidence of record, including x-ray reports and reports of cervical myelograms, lacks any opinion on causal relationship and is, therefore, of diminished probative value.[13]

Appellant expressed her belief that her cervical condition resulted from the October 25, 2004 employment incident. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[14] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[15] Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the work-related injury is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how appellant's claimed cervical condition was caused or aggravated by her employment, appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

[11] 5 U.S.C. § 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."

[12] *Merton J. Sills*, 39 ECAB 572 (1988).

[13] *See Michael E. Smith, supra* note 6.

[14] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[15] *Id.*

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained a traumatic injury causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the July 27 and May 11, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 27, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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