United States Department of Labor
Employees' Compensation Appeals Board

G.R., Appellant	)	
and	)	**Docket No. 07-204**
	)	**Issued: May 1, 2007**
DEPARTMENT OF VETERANS AFFAIRS, CARL VINSON MEDICAL CENTER, Dublin, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 30, 2006 appellant filed a timely appeal of a December 7, 2005 merit decision of the Office of Workers' Compensation Programs denying her claim for compensation. 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 met her burden of proof in establishing that she sustained a back condition causally related to factors of her federal employment on April 23, 2004.

FACTUAL HISTORY

On October 25, 2005 appellant, then a 44-year-old medical records clerk, filed a traumatic injury claim alleging that on April 23, 2004 she hurt her back bending, stooping and twisting while picking up medical records. The employing establishment received notice of

appellant's claim on May 12, 2004. In an accompanying accident report dated May 4, 2004, the employing establishment indicated that appellant strained her lower back while lifting records on April 23, 2004, but elected not to file a claim. Appellant was placed on light duty with no further lifting of records.

In a November 2, 2005 letter, the Office advised appellant that the evidence was insufficient to support her claim as no diagnosis of any condition resulting from her April 23, 2004 incident had been provided. It asked her to provide additional information, including a medical report with a firm diagnosis, history of injury and a rationalized explanation as to how the reported work incident caused or aggravated the diagnosed condition.

In response, the Office received a May 4, 2004 duty status report with a diagnosis of low back pain signed with an illegible signature. The history of injury indicated that appellant was lifting files on April 23, 2004 and hurt her lower back. Also received were: a May 4, 2004 report from Clarence Dupkoski, a physician's assistant, diagnosing mechanical low back pain after appellant helped move medical files on April 23, 24 and 26, 2004; a May 4, 2004 lumbar spine x-ray, noting mild degenerative changes; and reports which either predated the alleged injury of April 23, 2004 or did not relate to appellant's claimed back condition.[1]

By decision dated December 7, 2005, the Office denied appellant's claim on the grounds that the medical evidence did not establish that the incident on April 23, 2004 caused a medical condition.[2]

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.[3] Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[4] An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.

[1] These included: an employing establishment accident report for an April 19, 2002 incident involving an injury to appellant's back while pulling records from file room shelves; a June 5, 2003 report from Jack Owen, a physician's assistant, diagnosing low back pain; a June 5, 2003 x-ray of the lumbosacral spine, noting a normal study; and an October 27, 2004 report from Chris May, a physician's assistant, noting an upper respiratory infection.

[2] The Board notes that appellant submitted evidence to the Office subsequent to its December 7, 2005 decision. The Board cannot consider this evidence, however, as its review of the case is limited to that evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] *Shirley A. Temple*, 48 ECAB 404 (1997).

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's 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.[5]

ANALYSIS

Appellant alleged that on April 23, 2004 she injured her back while bending, stooping, and twisting while picking up medical records. The Office accepted that the incident occurred as alleged, but denied the claim on the grounds that she had not established an injury as a result of the incident. The medical evidence does not establish that appellant's claimed back condition is a result of the April 23, 2004 incident.

Appellant submitted a report from a physician's assistant, Mr. Dupkoski. This report, however, does not constitute probative medical evidence as physicians' assistants are not physicians as defined under the Federal Employees' Compensation Act.[6]

Appellant also submitted a May 4, 2004 duty status report which contains an illegible signature. It is well established that, to constitute competent medical opinion evidence, the medical evidence submitted must be signed by a qualified physician.[7] However, there is no indication of whether the report was signed by a physician. Thus, this report does not constitute probative medical evidence.

An award of compensation may not be based on appellant's belief of causal relationship.[8] 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.[9] Simple exposure to a workplace hazard

[5] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 4.

[6] *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician"; *see Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician); *see also David P. Sawchuk*, 57 ECAB ___ (Docket No. 05-1635, issued January 13, 2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act).

[7] *Vickey C. Randall*, 51 ECAB 357, 360 (2000); *Arnold A. Alley*, 44 ECAB 912, 921 (1993).

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

[9] *Id.*

does not constitute a work-related injury entitling an employee to medical treatment under the Act.[10]

Although the Office had informed appellant of the necessity of submitting medical evidence from a qualified physician which established causal relationship in its November 2, 2005 letter, she did not submit sufficient medical evidence in support of her claim. As appellant has failed to submit any medical evidence supporting a causal relationship between a diagnosed condition and the April 23, 2004 incident, she has failed to meet her burden of proof that she sustained an injury in the performance of duty, as alleged. Accordingly, the Board finds that the Office properly denied her claim for benefits under the Act.

CONCLUSION

Appellant has not met her burden of proof in establishing that her back condition was caused or aggravated by the April 23, 2004 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

[10] 20 C.F.R. § 10.303(a).