United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 08-882**
	)	**Issued: August 15, 2008**
DEPARTMENT OF HOMELAND SECURITY, CITIZENSHIP & IMMIGRATION SERVICES, San Francisco, CA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 4, 2008 appellant filed a timely appeal from a January 3, 2008 merit decision of a hearing representative of the Office of Workers' Compensation Programs denying her traumatic injury claim. Under 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 to establish that she sustained a traumatic injury in the performance of duty on February 22, 2007.

FACTUAL HISTORY

On May 28, 2007 appellant, then a 54-year-old applications clerk, filed a traumatic injury claim alleging that she injured her back on February 23, 2007.[1] She stopped work on February 23, 2007 and returned to work on June 11, 2007.[2]

Appellant first sought medical treatment for her back on February 28, 2007. In a February 28, 2007 medical note, Dr. Charles Halsted, a Board-certified internist, advised that appellant had severe low back and hip pain with back spasms. He noted that she was being evaluated for fractures and was being seen by orthopedic surgeons. In a March 7, 2007 medical note, Dr. Halsted noted acute pain due to a lumbar disc and spine degeneration. In a May 16, 2007 duty status report, he diagnosed back spasms. Dr. Halsted noted that appellant claimed she hurt her back while opening a door at work on March 2, 2007. He advised that she was injured on February 23, 2007, as he saw her on February 28, 2007.

In a letter dated June 12, 2007, the Office informed appellant that the evidence of record was insufficient to support her claim. It advised her as to the medical and factual evidence required and provided 30 days to submit the requested information.

By decision dated July 13, 2007, the Office denied appellant's claim on the grounds that she failed to establish fact of injury.

On July 17, 2007 appellant, through her attorney, requested an oral hearing before an Office representative. A telephonic hearing was held November 7, 2007.

In a September 30, 2007 statement, appellant stated that she injured her back and hip on February 22, 2007 at 3:30 p.m. while pulling heavy double doors inward. She reported her injury the next day and went to a doctor on February 28, 2007 due to severe back and hip pain. Appellant also submitted time and attendance worksheets, notices of medical appointments and excuses from work and reports from Dr. Halsted which were previously submitted. In July 11 and October 31, 2007 duty status reports, Dr. Halsted opined that appellant had a back strain while opening a door at work on February 22, 2007. He also noted that she had L5-S1 disc disease.

In a June 22, 2007 report, Dr. Chris S. Shin, a Board-certified physiatrist, advised that appellant had an acute onset of low back and leg pain since February 2007. A magnetic resonance imaging (MRI) scan revealed an annular tear at the L5-S1 disc. Dr. Shin opined that the "initial insult was from the pushing and/or pulling of the door at her work." He also opined that her long commute may have been a contributing factor.

The employing establishment controverted the claim. Yvette Hicks, appellant's supervisor, stated that appellant had called in sick on February 23, 2007 but did not mention any

[1] A notation on the form advised that February 22, 2007 was the date of injury.

[2] On October 31, 2007 appellant suffered an acute episode of dizziness and possible cerebral accident and was taken off of work for a few weeks to recover.

problem until March 29, 2007, when she requested that a Form CA-2 be sent to her. Ms. Hicks indicated that appellant was on paid leave status from February 23 through March 2, 2007, after which she was placed on absence-without-leave status. Yvonne Vargas, another supervisor, confirmed that appellant had called her twice advising that she was ill and never mentioned that she had been injured on the job.

By decision dated January 3, 2008, an Office hearing representative affirmed the denial of appellant's claim on the grounds she failed to establish fact of injury. The hearing representative found that the claimed incident giving rise to the injury was not established nor was there sufficient medical evidence to establish causal relationship between her claimed injury and factors of her employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office must first determine whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component of fact of injury is whether the incident caused a personal injury and, generally, this can be established only by medical evidence.[5]

When determining whether the implicated employment factors caused the claimant's diagnosed condition, the Office generally relies on the rationalized medical opinion of a physician.[6] To be rationalized, the opinion must be based on a complete factual and medical background of the claimant[7] and must be one of reasonable medical certainty,[8] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

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[3] 5 U.S.C. §§ 8101-8193.

[4] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Ellen L. Noble*, 55 ECAB 530 (2004).

[6] *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

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

[9] *Judy C. Rogers*, 54 ECAB 693 (2003).

ANALYSIS

Appellant alleged that her back condition was sustained on February 22, 2007 while pulling heavy double doors inward. The Office found that she did not establish the employment incident occurred as alleged or that opening a door at work contributed to her current back condition. An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and the circumstances and his or her subsequent course of action.[10] An employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong persuasive evidence.[11]

The Board finds that appellant failed to establish the occurrence of either the February 22, 2007 incident or that opening a door at work contributed to her current back condition. There are significant inconsistencies in the evidence which cast serious doubt upon the validity of her claim.

The evidence supports that, while appellant called in sick on February 23, 2007 and sought medical attention for her back condition from Dr. Halsted on February 28, 2007, she did not mention that a work-related injury had occurred to the employing establishment until March 29, 2007, when she requested a Form CA-2 be sent to her. There is no explanation as to why she delayed reporting the February 22, 2007 incident. Although appellant claimed that opening a door at work on February 22, 2007 caused her back condition, she failed to identify the alleged employment factor on her CA-1 form or provide the information the Office requested in the June 12, 2007 letter. Although she obtained medical treatment from Dr. Halsted on February 28, 2007, she did not mention any history that she had hurt her back while opening a door at work until May 16, 2007. Furthermore, appellant provided Dr. Halsted with inconsistent dates as to when the work injury had occurred, claiming that she had hurt her back at work on February 22 and 23 and March 2, 2007. Accordingly, there is an inconsistency with her description of the onset of her condition.

While the medical evidence shows that appellant has a diagnosed condition, it does not establish that the alleged employment factor of opening a door caused her back condition. It is her burden of proof to submit medical evidence on causal relationship between a diagnosed condition and the identified employment factor. In a February 28, 2007 medical note, Dr. Halsted reported that appellant had severe low back and hip pain with back spasms, but did not address the cause of such conditions or indicate whether he knew of the alleged work incident. In a March 7, 2007 medical note, he attributed appellant's pain to lumbar disc and spine degeneration and made no mention of any other cause. In a May 16, 2007 duty status report, Dr. Halsted attributed appellant's back spasms to a work incident of opening a door on February 23, 2007, but offered no rationale in support of his opinion or explanation as to how or why appellant's preexisting spinal condition was a factor. As noted above, the alleged work incident of opening a door or an injury occurring on February 22, 2007 has not been established by the record. Moreover, Dr. Halsted provided only a speculative opinion on causal relationship

[10] *See Betty J. Smith*, 54 ECAB 174 (2002).

[11] *Gregory J. Reser*, 57 ECAB 277 (2005).

without supporting medical rationale. The Board has long held that medical opinions not containing rationale on causal relation are of diminished probative value.[12] Dr. Halsted incorrectly noted the date of injury as February 23, 2007. The Board has held that medical reports must be based on a complete and accurate factual and medical background and that medical opinions based on an incomplete or inaccurate history are of diminished probative value.[13] Dr. Halsted's opinion is of diminished probative value and insufficient to meet appellant's burden of proof. While he correctly noted the date and history of the incident in his July 11 and October 31, 2007 duty status reports, he provided no rationale as to the cause of appellant's condition. As noted, medical opinions not containing rationale on causal relation are of diminished probative value. Dr. Halsted's opinion is insufficient to meet appellant's burden of proof.

Appellant also submitted a June 22, 2007 report by Dr. Shin, who noted that appellant had an acute onset of low back and leg pain since February 2007. Dr. Shin diagnosed an annular tear at the L5-S1 disc. While he opined that the "initial insult was from the pushing and/or pulling of the door at her work," he did not explain how the incident caused appellant's annular tear at the L5-S1 disc and noted that her long commute may be a contributing factor. Medical opinions not containing rationale on causal relation are of diminished probative value. Dr. Shin's opinion is insufficient to meet appellant's burden of proof.

Appellant's description of the onset of her condition and the factors she identified as responsible for her condition as well as the medical histories provided by the physicians of record are not consistent to establish the occurrence of the February 22, 2007 incident or that her work duties of opening a door at work attributed to her current back condition. There is insufficient rationalized medical evidence of record establishing that appellant sustained a back injury while in the performance of duty, as alleged. The Board finds that she has failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

[12] *Mary E. Marshall*, 56 ECAB 420 (2005); *Carolyn F. Allen*, 47 ECAB 240 (1995).

[13] *James R. Taylor*, 56 ECAB 537 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 3, 2008 is affirmed.

Issued: August 15, 2008
Washington, DC

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

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

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