United States Department of Labor
Employees' Compensation Appeals Board

L.G., Appellant	)	
and	)	**Docket No. 07-2291**
	)	**Issued: February 26, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Chester, VA, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 31, 2007 appellant filed a timely appeal from the November 20, 2006 and July 11, 2007 merit decisions of the Office of Workers' Compensation Programs denying her traumatic injury claim and the August 14, 2007 nonmerit decision denying her request for merit review. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a left shoulder injury while in the performance of duty on May 23, 2006; and (2) whether the Office properly refused to reopen her case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 19, 2006 appellant, a 57-year-old casual clerk dispatcher, filed a traumatic injury claim alleging that on May 23, 2006 she strained her back and left shoulder while throwing mail into canvas buggies. In support of her claim, appellant submitted illegible physicians' notes

signed by Dr. Phillip Shou, a Board-certified internist for the period May 11 through June 6, 2006.

In a June 21, 2006 letter, the employing establishment controverted the claim. It contended that on the date in question, appellant did not notify anyone in her office that she sustained an injury and that she did not file her claim until after her employment was terminated on June 7, 2006.

In a letter dated July 6, 2006, the Office informed appellant that the information submitted was insufficient to establish her claim. It advised her to submit additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

In a July 11, 2006 description of the alleged injury, appellant stated that, as she was lifting and throwing a stack of marriage mail into buggies from the center of the floor, she "felt like [she] had thrown [her] shoulder out." She allegedly reported the incident to her supervisor, Charisse Davis, immediately after the alleged injury. In an undated statement, appellant indicated that Ms. Davis told her that she would "be alright."

Appellant submitted a June 14, 2006 report of an x-ray of the cervical spine; a June 26, 2006 report of a magnetic resonance imaging (MRI) scan of the cervical spine; a June 26, 2006 report of an MRI scan of the left shoulder; and illegible treatment notes from Dr. Shou for the period May 11 through June 25, 2006. On July 28, 2006 the Office again informed appellant that, as she had failed to provide a physician's rationalized opinion as to the cause of her claimed condition, the information submitted was insufficient to establish her claim.

Appellant submitted notes from Dr. Shou for the period June 9 through July 7, 2006. On June 9, 2006 Dr. Shou stated that she complained of left-sided neck and left shoulder pain resulting from an injury at work the previous week. He diagnosed cervical strain and left shoulder sprain. On June 21, 2006 Dr. Shou diagnosed persistent cervical pain; left shoulder pain; and "probable cervical degenerative disc disease." On July 5, 2006 he diagnosed cervical radiculopathy, noting that appellant's MRI scan revealed a mild, diffuse disc herniation at C6-7, sloping to the left. The record contains records of physical therapy visits for the period July 7 through August 2, 2006.

By decision dated August 29, 2006, the Office denied appellant's claim. It accepted that the work event occurred as alleged, but found that the medical evidence failed to demonstrate that the claimed medical condition was causally related to the established work event and was, therefore, insufficient to establish that appellant had sustained an injury under the Federal Employees' Compensation Act on May 23, 2006.

The record contains an August 28, 2006 report of investigation from the employing establishment's Office of the Inspector General which concluded that there was no independent evidence to support that appellant had suffered a work-related injury. In a July 28, 2006 memorandum of interview, Ms. Davis stated that appellant had not reported the alleged incident to her on May 23, 2006 and that, in fact, she was not working on the date in question. She

indicated that she was not aware of any job-related injury regarding appellant until June 9, 2006, two days after she was terminated.

Appellant submitted reports from Dr. Shou dated June 12, September 8 and 26, 2006. On June 12, 2006 Dr. Shou diagnosed cervical strain and shoulder sprain. In a letter dated September 8, 2006, he stated that he had examined appellant on June 9, 2006 for cervical strain and left shoulder sprain after her work-related injury. Dr. Shou noted that he had been treating appellant since October 15, 2003 and that she "did not complain of her neck pain radiating down to her left shoulder prior to her alleged injury." He concluded, therefore, that her conditions were "caused or at least aggravated by her claimed injury." In an October 12, 2006 report of a follow-up examination, Dr. Shou again diagnosed left shoulder pain, noting that the date of injury was May 23, 2006.

Appellant submitted reports dated August 28, 2006 from Dr. Praveer Srivastava, a Board-certified orthopedic surgeon, who examined her on August 10 and 22, 2006. Dr. Srivastava related the history of injury as described by appellant, stating that she had injured her left shoulder on May 23, 2006 while lifting and throwing bundles of mail into carriers' cases, when appellant "felt a snap." His August 10, 2006 examination revealed full active and passive range of motion of the cervical spine with flexion and extension and right and left bending and rotation to the right and left. Dr. Srivastava found no crepitus with range of motion. Appellant demonstrated a tender trigger area over the left upper paraspinal region, close to the superior angle of the scapula. Examination of the left shoulder showed no tenderness over the acromioclavicular joint or other bony point. Neer's sign was positive. Dr. Srivastava diagnosed left shoulder pain probably with bursitis with impingement. In his report of the August 22, 2006 examination, Dr. Srivastava stated that appellant's MRI scan was unremarkable, showing no rotator cuff tear or labral lesions.

On September 6, 2006 appellant requested reconsideration of the August 29, 2006 decision.

In a statement dated July 17, 2006, Latisha Davis, a coworker, indicated that on May 23, 2006 she helped appellant lift the larger, heavier packages because "[appellant] had hurt her back/shoulder that morning." She stated that "management knew that appellant hurt her back, as a matter of fact, almost everyone in the employing establishment knew she had hurt her back."

Appellant submitted physical therapy notes dated September 11, 2006 from Paul C. Bryant, an October 12, 2006 report from Dr. Srivastava who diagnosed left arm pain and left shoulder pain; an undated narrative statement in which she contended that she had been hindered in her attempt to obtain a claim form.

By decision dated November 20, 2006, the Office denied modification of its August 29, 2006 decision finding that there was no medical evidence demonstrating a causal connection between the established incident and appellant's diagnosed condition. It stated that Dr. Shou's September 8, 2006 report was not well rationalized and was speculative in nature.

On December 8, 2006 appellant again requested reconsideration. In support of her request, she submitted a July 18, 2006 witness statement from coworker, Christine Foltyn, who

indicated that appellant injured her back on May 23, 2006; September 14, 2005 laboratory test results; and copies of numerous documents that were previously provided and reviewed by the Office. On May 22 and 23, 2007 Charisse Davis denied appellant's claim that she reported the alleged injury to her on May 23, 2006 stating that she was on annual leave on the date in question. Ms. Davis provided "clock rings" for the period May 22 through 25, 2006 which she contended proved that she was not at work on May 23, 2006.

By decision dated July 11, 2007, the Office denied modification of its November 20, 2006 decision. It found that the evidence failed to establish a causal relationship between the established incident and appellant's diagnosed condition.

On July 17, 2007 appellant requested reconsideration of the July 11, 2007 decision. She contended that the numerous medical reports and witness statements she had submitted were sufficient to establish her claim and that she should be compensated for all the pain and suffering that resulted from her May 23, 2006 injury.

By decision dated August 14, 2007, the Office denied appellant's request for reconsideration. It found that, as appellant had failed to raise a substantial legal question or include new and relevant evidence, her request did not warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

The Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[1] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[2]

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of 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 or specific condition for which compensation is claimed is causally related to the employment injury.[3] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the

[1] 5 U.S.C. § 8102(a).

[2] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947). 5 U.S.C. § 8102(a).

[3] *Robert Broome*, 55 ECAB 339 (2004).

time, place and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[4]

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.[5] An award of compensation may not be based on appellant's belief of causal relationship.[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 a causal relationship.[7] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[8]

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.[9]

ANALYSIS -- ISSUE 1

The Office accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the May 23, 2006 workplace incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. Medical evidence submitted by her consisted of reports from Dr. Shoe and Dr. Srivastava, reports of MRI scans, x-rays and other laboratory tests and physical therapy notes. None of these reports constitutes probative medical evidence.

Dr. Shou's reports and treatment notes for the period May 11 through October 12, 2006 reflect that he treated appellant for cervical and left shoulder pain. On June 9, 2006 Dr. Shou diagnosed cervical strain and left shoulder sprain, noting that appellant complained of left-sided neck and left shoulder pain which was allegedly due to a work injury. On June 21, 2006 he diagnosed persistent cervical pain; left shoulder pain; and "probable cervical [degenerative disc

[4] *Deborah L. Beatty*, 54 ECAB 340 (2003). *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).

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

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

[7] *Id.*

[8] 20 C.F.R. § 10.303(a).

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

disease]." On July 5, 2006 Dr. Shou diagnosed cervical radiculopathy noting that appellant's MRI scan revealed a mild, diffuse disc herniation at C6-7, sloping to the left. On October 12, 2006 he diagnosed left shoulder pain. None of these reports contained an opinion as to the cause of appellant's diagnosed condition. The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10] On September 8, 2006 Dr Shou opined that appellant's cervical strain and left shoulder sprain were "caused or at least aggravated by her claimed injury." However, his unrationalized opinion is insufficient to establish a causal relationship between the May 23, 2006 incident and appellant's claimed condition. Dr. Shou did not provide a complete factual and medical background of the claimant and did not explain how the established incident caused or aggravated appellant's condition.[11] His observation that he had been treating appellant since October 15, 2003 and that she "did not complain of her neck pain radiating down to her left shoulder prior to her alleged injury" is insufficient to establish causal relationship.[12] Further, Dr. Shou's opinion was speculative in nature. His report is, therefore, of diminished probative value.

Reports from Dr. Srivastava are also insufficient to establish appellant's claim. As none of his reports contain an opinion regarding the cause of appellant's condition, they are of limited probative value on the issue of causal relationship.[13] The Board notes that Dr. Srivastava's description of the incident as described by appellant, does not constitute an opinion by him as to the cause of her condition. Additionally, Dr. Srivastava's speculative diagnosis of "left shoulder pain, probably with bursitis with impingement" is not a basis for payment for compensation.

The record does not contain an opinion by any qualified physician supporting appellant's contention that her neck and left shoulder condition was causally related to the accepted employment incident. While she has submitted chart notes and other medical documents which track her treatment, she has not provided a narrative report containing a physician's rationalized opinion on whether there is a causal relationship between her condition and the established May 23, 2006 work incident. The Board notes that appellant submitted notes and reports signed by a physical therapist. As these reports were not signed by individuals that qualify as "physicians" under the Act, the Board finds that they do not constitute probative medical

[10] *A.D.*, 58 ECAB ___ Docket No. 06-1183 (issued November 14, 2006); *Michael E. Smith*, 50 ECAB 313 (1999). The Board has also held that a diagnosis of pain does not constitute a basis of payment for compensation, as pain is considered to be a symptom rather than a specific diagnosis. *Robert Broome, supra* note 3.

[11] *John W. Montoya, supra* note 9.

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

[13] *See supra* note10.

evidence.[14] Reports of x-rays, MRI scans and other medical tests which do not contain an opinion as to the cause of appellant's condition, are of limited probative value for reasons stated above and are insufficient to establish appellant's claim.

Appellant expressed her belief that her cervical and left shoulder condition resulted from the May 23, 2006 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.[15] 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.[16] Causal relationship must be substantiated by reasoned medical opinion evidence which it is appellant's responsibility to submit. Therefore, her belief that her condition was caused by the work-related incident 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 her claimed left shoulder and neck conditions were 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.

LEGAL PRECEDENT -- ISSUE 2

Under Section 8128(a) of the Federal Employees' Compensation Act,[17] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[18] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> (i) Shows that the Office erroneously applied or interpreted a specific point of law; or

[14] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8101(2). Section 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." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[15] *See Joe T. Williams*, *supra* note 12.

[16] *Id.*

[17] 5 U.S.C. § 8101-8193.

[18] 20 C.F.R. § 10.606(b).

(ii) Advances a relevant legal argument not previously considered by the Office; or

(iii) Constitutes relevant and pertinent new evidence not previously considered by the Office.

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[19]

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]

ANALYSIS -- ISSUE 2

Appellant's July 17, 2007 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Appellant merely reiterated her contention that the evidence of record established her claim. Consequently, she 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). As appellant submitted no additional factual or medical evidence in support of her request for reconsideration, she also failed to satisfy the third requirement of section 10.606(b).

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her July 17, 2007 request for reconsideration.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on May 23, 2006. It also finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[19] *Id*

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

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 14 and July 11, 2007 and November 20, 2006 are affirmed.

Issued: February 26, 2008
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