United States Department of Labor
Employees' Compensation Appeals Board

R.D., Appellant	)	
and	)	**Docket No. 08-1189**
	)	**Issued: October 7, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Pine Bluff, AR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 17, 2008 appellant filed a timely appeal from the January 16, 2008 decision of the Office of Workers' Compensation Programs' hearing representative which affirmed the denial of her claim for benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this decision.

ISSUE

The issue is whether appellant has established that she sustained an injury in the performance of duty on June 6, 2007, as alleged.

FACTUAL HISTORY

On June 14, 2007 appellant, then a 44-year-old letter carrier, filed a traumatic injury claim alleging that she injured her back on June 7, 2007 while she was loading trays. Next to the June 7, 2007 date she wrote "approximately" and indicated that June 6, 2007 was the date of injury. The employing establishment controverted the claim as appellant was not at work on June 7, 2007 when the alleged injury occurred. It also related that appellant changed the date of

injury once she realized that she had not worked on June 7, 2007. On the back of the form, the date of injury was changed from June 7, 2007 to June 6, 2007.

Appellant submitted a June 21, 2007 return to work form which noted that she could return to work on June 26, 2007 and statements dated June 14 and 15, 2007. A June 16, 2007 "Excuse From Work or School" form released her to light-duty work for five days on June 21, 2007. Appellant noted that while loading trays on or about June 7, 2007 she felt a pull in her mid to lower back pain by the end of the day. Her back still hurt on June 8, 2007 and she called in sick for Friday and Saturday and returned to work on Monday. When appellant returned to work, she continued to experience the same symptoms of pain and stiffness in her back. She did not report the injury on June 7, 2007 as no supervisor or manager was present when she returned from her route at the end of the day. Appellant related that she had mistakenly noted the date of injury as June 7, 2007 when it should have been June 6, 2007.

On June 25, 2007 the Office received an undated investigative memorandum from the employing establishment regarding her irregular attendance and leave used for the period February 2 to June 1, 2007.

On July 2, 2007 the Office informed appellant that the evidence of record was insufficient to establish her claim. It requested additional medical and factual evidence to support her claim.

On July 16, 2007 the Office received evidence from appellant. An x-ray of June 15, 2007 from Dr. William Lim, a Board-certified radiologist, was negative for fracture or dislocation. In a June 15, 2007 report, Dr. Bradley Walsh, an attending physician, noted that appellant had been experiencing back pain for approximately a week and that she had a history of back pain. The onset of the pain occurred nine days prior while lifting at the employing establishment. Range of motion for extension and flexion was limited due to pain. Dr. Walsh reported working diagnoses of herniated disc, lumbar sprain and vertebral fracture. He related that an x-ray interpretation of the lumbar spine revealed no fracture or disc compression.

On June 25, 2007 Dr. Imran Waheed, an attending physician, stated that appellant was seen in the emergency room on June 15, 2007. He reported decreased range of motion due to pain and diagnosed a lumbar strain.

On July 10, 2007 appellant related that her injury was sustained on June 6, 2007 while lifting trays. She called in sick from June 7 to 13, 2007 and returned to work on June 14, 2007. Appellant first saw a treating physician on July 9, 2007 which was the date of the first available appointment. On June 14, 2007 she informed Dawn Richardson, a manager, that she had injured her back at work the previous week. Appellant related that she had not sustained any other injury between the date she reported the injury to her supervisor and being seen by her physician. As to prior injuries, appellant related that this was the third time in four years that she "had a problem in this area" and that she had filed five injury claims with the employing establishment.

On July 17, 2007 the Office received a duty status report (Form CA-17) dated June 26, 2007,[1] a June 25, 2007 Jefferson Regional Medical Center emergency room report which

[1] The physician's signature is illegible.

restricted appellant to light duty until July 29, 2007, limited-duty job offers dated June 27 and 29, 2007; appellant's request for light duty; a June 29, 2007 disability certificate signed by Dr. K. Williams, a treating osteopath; and statements dated June 19 and 29, 2007 by appellant who related that at approximately 10:00 a.m. on June 6, 2007 she felt her back pull while putting mail into her vehicle. In the June 26, 2007 duty status report, the physician diagnosed a lumbar strain and checked "yes" as to whether the history of injury corresponded to the description of how the injury occurred.

On June 29, 2007 appellant noted that Dr. Williams was not her treating physician and that she scheduled the appointment to get a referral for physical therapy. Her treating physician was still not available to see her.

On July 25, 2007 the Office received appellant's claims for wage-loss compensation for the period May 26 through July 6, 2007, a time analysis form and a July 24, 2007 controversion by the employing establishment. Hermese Johnson, Health & Resource Manager, contended that the claim was questionable as appellant changed the date of injury once she realized that she had not been at work on the day originally claimed. Ms. Johnson also noted that appellant has been disciplined for attendance problems prior to her alleged injury and that she is claiming wage-loss compensation for time prior to the date of the injury.

By decision dated August 9, 2007, the Office denied appellant's claim, finding that the evidence did not establish that her medical condition was causally related to the employment incident. It noted there was doubt as to the validity of her claim due to appellant changing the date after she realized she had not been at work on June 7, 2007.

The Office subsequently received duty status reports dated July 23 and August 6, 2007 diagnosing a lumbar strain with radiating pain. The reports noted that appellant strained her back while lifting trays at work and noted June 6, 2007 as the injury date. In duty status reports dated July 23 and August 6, 2007, Dr. Toni L. Middleton, a treating Board-certified family practitioner, diagnosed lumbar strain. She noted appellant strained her back while carrying trays on June 6, 2007. Dr. Middleton checked "yes" to the question of whether the injury history corresponded to appellant's description of how the injury occurred.

On September 6, 2007 appellant requested a review of the written record by an Office hearing representative. In a September 4, 2007 report, Dr. Middleton stated that she had been treating appellant for a lumbar strain which occurred on June 6, 2007. She related that the injury happened while appellant was lifting trays and felt pain and pulling in her back. A physical examination revealed tenderness on lumbar paraspinous palpation and "limited range of motion with bending." Dr. Middleton noted that appellant first presented for treatment at the emergency room on June 14, 2007. Appellant was subsequently seen on June 21, 2007 at the clinic emergency room and had follow-up visits on June 29, July 9 and 23 and August 6, 2007.

In an October 3, 2007 statement, appellant stated that when she completed the CA-1 form that she was unable to "remember the last date that I was at work because I had not been to work since I injured my back." At the time she completed the CA-1 form, she had written several statements and was in the process of being given a predisciplinary report.

By decision dated January 16, 2008, the Office hearing representative affirmed the denial of appellant's claim. She found that the evidence was insufficient to establish that the June 2007 employment incident occurred, as alleged, as the record contained medical evidence that appellant had back pain dating back to 2003. The hearing representative also found that the evidence casts doubt as to whether an injury occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation 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.[2]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[3] 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 circumstances and his or her subsequent course of action.[4] An employee has not met her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[5] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statements in determining whether a *prima facie* case has been established.[6] However, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.[7]

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.[8] Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship

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[2] *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Louise F. Garnett*, 47 ECAB 639 (1996).

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

[5] *Paul Foster*, 56 ECAB 208 (2004).

[6] *Barbara R. Middleton*, 56 ECAB 634 (2005); *Linda S. Christian*, 46 ECAB 598 (1995).

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

[8] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008).

between the claimant's diagnosed condition and the implicated employment factors.[9] The opinion of the physician must be based on a complete factual and medical background of the claimant,[10] must be one of reasonable medical certainty[11] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[12]

ANALYSIS

The Board must initially determine whether an employment incident occurred as alleged on June 6, 2007. Although the Office found that the evidence was not sufficient to establish the incident, the Board finds that there are no inconsistencies in the factual evidence that cast serious doubt as to whether the incident occurred as alleged.[13] While appellant initially noted the date as June 7, 2007 she has been consistent in explaining how the injury occurred. Moreover, the claim form contains both the June 6 and 7, 2007 dates. In her June 15, 2007 statement, appellant noted that she had mistakenly put down the wrong date when filling out the claim form. In addition, the record shows that she filed her claim on June 14, 2007, eight days after the alleged incident and when she had returned to work following the injury. Appellant sought medical treatment at the emergency room on June 14, 2007. On October 3, 2007 she provided further clarification as to why she mistakenly noted the wrong date on the CA-1 form. Appellant related that at the time she completed the claim form she was unable to "remember the last date that I was at work because I had not been to work since I injured my back." Moreover, at the time she was completing the claim form she was also writing several other statements and was given a predisciplinary notice regarding her attendance. The Board has held that an employee's statement regarding the occurrence of an employment incident will stand unless refuted by strong or persuasive evidence.[14] While the employing establishment stated that appellant only changed the date after she had been informed that she had not been at work on June 7, 2007, the record shows that appellant took leave following the incident and has been consistent in her explanation as to how she allegedly injured her back. The Board finds that the record is sufficient to establish an employment incident as alleged on June 6, 2007 and, therefore, the medical evidence will be reviewed to determine if an injury was causally related to the employment incident.

The Board further finds that appellant, however, failed to meet her burden of proof to establish that she sustained an injury caused by this incident. The medical evidence of record includes reports from Drs. Middleton, Waheed and Walsh and duty status reports dated June 26, July 23 and August 6, 2007. Dr. Walsh reported working diagnoses of herniated disc, lumbar

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

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

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

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

[13] *See Barbara R. Middleton*, *supra* note 6.

[14] *Sedi L. Graham*, 57 ECAB 494 (2006).

sprain and vertebral fracture. He related that appellant's pain began June 6, 2007 which he attributed to a lifting injury at work. However, Dr. Walsh failed to address how the lumbar strain, herniated disc and vertebral fracture were caused or contributed to by the accepted employment incident. Medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.[15] Thus, Dr. Walsh's report is insufficient to establish that appellant sustained a medical condition due to the accepted incident as it contains no rationale on causal relationship.

In his June 25, 2007 report, Dr. Waheed diagnosed a lumbar sprain. However, he did not provide any opinion regarding the cause of the diagnosed condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16] Thus, Dr. Waheed's report is insufficient to establish that appellant sustained a medical condition due to the accepted incident as he provided no opinion as to the cause of appellant's lumbar sprain.

The record contains duty status reports dated July 23 and August 6, 2007 and a September 4, 2007 report by Dr. Middleton diagnosing lumbar strain. In the July 23 and August 6, 2007 duty status reports, Dr. Middleton noted that appellant injured her back on June 6, 2006 while lifting trays. She checked "yes" to the question of whether the injury history corresponded to appellant's description of how the injury occurred on the August 6, 2007 form. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[17] In the September 4, 2007 report, Dr. Middleton related that appellant had been treated for a lumbar strain which occurred on June 6, 2007, based on her history and emergency room record. However, she provided no rationale explaining how appellant's lumbar strain was caused by the June 6, 2007 employment incident. As noted above, a medical report without supporting rationale is of limited probative value.[18] As Dr. Middleton provided no rationale for her conclusion that appellant's lumbar strain was causally related to the June 6, 2006 lifting incident, it is of diminished probative value. For these reasons, her duty status reports and September 4, 2007 report are insufficient to establish that appellant sustained a lumbar strain as a result of the June 6, 2007 lifting incident.

Appellant also submitted a June 15, 2007 report by Ms. Kiefhaber, RN., reports dated June 15 and 25, 2007 by Mr. Elkins, RN and a June 25, 2007 report by Mr. Warner, RN. Section 8101(2) of the Act provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined by the Act will be accorded probative value. Health care providers such as nurses,[19]

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[15] *Elizabeth H, Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

[16] *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007); *Willie M. Miller*, 53 ECAB 697 (2002).

[17] *D.D.*, 57 ECAB 734 (2006).

[18] *T.F.*, 58 ECAB ___ (Docket No. 06-1186, issued October 19, 2006).

[19] *G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007).

acupuncturists, physician's assistants and physical therapists are not physicians under the Act.[20] As Ms. Kiefhaber, Mr. Elkins and Mr. Warner are nurses, they are not considered physicians under the Act. Thus, their opinions carry no weight or probative value.[21]

The Board accordingly finds that appellant did not meet her burden of proof in this case. The record does not contain probative medical evidence on causal relationship between any diagnosed condition and the June 6, 2007 employment incident.

CONCLUSION

The Board finds that the evidence of record does not establish an injury causally related to a June 6, 2007 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 16, 2008 is modified to reflect that an employment incident occurred as alleged, and affirmed as modified.

Issued: October 7, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[20] *Id.*

[21] *Id.*