United States Department of Labor
Employees' Compensation Appeals Board

B.B., Appellant	)	
and	)	**Docket No. 09-193**
	)	**Issued: July 13, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 27, 2008 appellant, through counsel, filed a timely appeal from the decisions of the Office of Workers' Compensation Programs dated February 25 and September 30, 2008 denying her claim for compensation for an employment-related injury. 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 an injury in the performance of duty on October 2, 2007, as alleged.

FACTUAL HISTORY

On October 19, 2007 appellant filed a claim alleging a recurrence of a July 11, 2006 injury on October 2, 2007. She indicated that she stopped work on October 12, 2007. Appellant noted that after her prior injury she returned to work with restrictions but that, on October 2, 2007, while pushing a skid of flats, she sustained further injuries, including sprained cervical spine, neck and shoulder sprain, an injury to her lower right back and shoulder and neck sprains

and torn ligaments. In a letter dated October 18, 2007, the employing establishment noted that appellant returned to work on July 10, 2007 on limited duty eight hours per day until October 12, 2007. The employing establishment noted that on October 10, 2007 she gave them a note from a Dr. Moore and Associates stating that she had been totally disabled from July 11, 2006 to present, so a representative of the employing establishment advised her to complete a recurrence claim on October 12, 2007. By letter dated January 17, 2008, the Office informed appellant that it would treat her claim for recurrence as a claim for a new traumatic injury. It instructed her to submit further evidence in support of her claim.

An October 5, 2007 unsigned note on the letterhead of Dr. Placido A. Menezes, a Board-certified orthopedic surgeon, revealed that appellant complained of right knee pain associated with buckling. It revealed that on physical examination appellant had antalgic gait on the right side and swelling of the right knee with tenderness over the medial joint line and limited and painful range of motion in her knee. The note advised physical therapy and Vicodin.

In an October 6, 2007 report, Dr. Roosevelt Cherubin, appellant's Board-certified family practitioner, indicated that appellant has been under his care since July 11, 2006 for multiple injuries that she sustained on July 11, 2006. He noted clinical diagnoses of traumatic arthritis of the right knee and right ankle, neck sprain, sprained left shoulder, backache, herniated intervertebral disc L4-S1 and herniated lumbar disc. Dr. Cherubin opined that appellant has been totally disabled from July 11, 2006 until present. In a November 3, 2007 attending physician's report, he noted that appellant had tenderness in both legs and contusion of both ankles, feet and head. Dr. Cherubin diagnosed neck and shoulder sprain and left chest wall contusion. He noted that he first treated appellant on July 15, 2006 and listed her period of total disability as July 14, 2005 until present. In an attending physician's report dated November 17, 2007, Dr. Cherubin noted that appellant stated that on October 2, 2007 she was hit by a hilo carrying mail and knocked to the floor. He diagnosed neck and left shoulder pain and contusion of both ankles, feet, legs and head. Dr. Cherubin checked the box indicating that he believed this condition was caused by appellant's employment but did not explain his answer. He opined that appellant was totally disabled from July 11, 2006 until present.

In a November 6, 2007 letter in response to queries by the Office, appellant indicated that on October 12, 2007 she aggravated her right shoulder, neck and right knee when she moved a postcon with mail which was extremely heavy. She noted that the rail on the postcon hit her knee and that this caused her to suddenly jerk sideways which led her to reinjure her knee and lower back.

By decision dated February 25, 2008, the Office denied appellant's claim. It noted that, although appellant had established that an incident occurred as alleged, the medical evidence did not establish that a condition had been diagnosed in connection with this incident.

On March 19, 2008 appellant requested an oral hearing. At the hearing held on July 14, 2008, she testified that she worked for the employing establishment for 28 years but was not presently working pursuant to her doctor's instructions. Appellant noted that she had a prior claim for a July 11, 2006 injury but that she returned to work in July 2007. She noted that on October 2, 2007 she was working flats and she pushed something and injured her back, but that she did not report it at the time to her employer. Appellant indicated that she stopped work on

October 12, 2007. She noted that on that date she banged her knee on a postcon. Appellant noted that two days prior to this incident she gave her employer a note from her doctor and that after she banged her knee she noted that the employer sent her home because "they didn't like what my doctor wrote in the letter." She noted that she was not sent home because of the incident on October 12, 2007 but because of the employing establishment's reaction to her doctor's note. Appellant noted that after this she asked for a work release from her doctor but he would not comply with her request.

New evidence submitted by appellant included a report by Dr. Mehrdad Hedavatnia, a pain specialist, dated January 23, 2008, wherein he noted that appellant suffered from right leg and lower back pain after lifting a heavy object at work. Dr. Hedavatnia made a primary diagnosis of lumbar radiculopathy left greater than right. Appellant also submitted documents with regard to her prior injury.

By decision dated September 30, 2008, the hearing representative affirmed the February 25, 2008 decision denying appellant's claim for the reason that the medical evidence did not establish that she sustained an injury causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[5] *Id*. For a definition of the term injury, *see* 20 C.F.R. § 10.5(q) and (ee).

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.[6]

ANALYSIS

The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.[7] Appellant has not submitted rationalized, probative medical evidence to establish that the alleged employment incident caused a personal injury.

The unsigned opinion written on Dr. Menezes' letterhead does not address appellant's employment or link any injury to that employment. The report of Dr. Hedvatnia notes that appellant indicated that she was hit by a heavy object at work. However, no further history of this incident, including a date of incident, is given. Furthermore, Dr. Hedvatnia never provides any statement affirmatively linking appellant's medical condition to her alleged work incident. Dr. Cherubin also never provides a rationalized medical opinion linking appellant's medical condition to the employment incident in October 2007. He checked a box indicating that appellant's condition was causally related to her employment, but never provided a rationalized opinion affirmatively linking the incident with appellant's medical condition and supporting this with a detailed medical explanation. 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.[8]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[9] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on or about October 2, 2007.

[6] *Id.*

[7] *John J. Carlone*, *supra* note 4.

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

[9] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 30 and February 25, 2008 are affirmed.

Issued: July 13, 2009
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