United States Department of Labor
Employees' Compensation Appeals Board

L.R., Appellant	)	
and	)	**Docket No. 09-1487**
	)	**Issued: March 1, 2010**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On May 26, 2009 appellant filed a timely appeal from a December 3, 2008 merit decision of the Office of Worker's Compensation Programs denying modification of an October 29, 2007 merit decision. 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 established that she sustained an injury in the performance of duty on June 22, 2007 causally related to her employment.

FACTUAL HISTORY

On July 3, 2007 appellant, a 64-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on June 22, 2007 she sustained a strained lower left back muscle while pushing and pulling containers of mail and unloading trailers at the employing establishment's south dock. She also attributed her condition to performing extra work on the date in question because a third coworker did not show up. Appellant alleged that she

experienced back pain on that day and the following Monday morning, June 25, 2007, could not walk.

Appellant submitted an undated statement from a Mr. Riley, a supervisor, reporting that she experienced pain after working on the south dock, loading and unloading trailers on June 22, 2007.

On June 27, 2007 Dr. Jennifer C. Carpenter, an internist, reported findings on examination and diagnosed knee and back pain. She noted that appellant's back pain had worsened, that she injured her back "[five] days ago" and that her employment duties involved "loading on a dock."

Appellant submitted notes, dated June 25, July 2 and 7, 2007, in which Dr. Carpenter released her from work. The July 2, 2007 note attributed her no work status to back pain.

On July 2, 2007 Dr. Carpenter reported findings on examination and diagnosed back pain. She noted that appellant's back pain developed "a few days ago."

On July 18, 2007 Dr. David Niebruegge, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of appellant's lumbar spine revealed a small focal disc herniation at L5-S1with annular tear. He opined that this was "likely causing [her] symptoms." Dr. Niebruegge also noted that, while there was mild left foraminal narrowing, there was no evidence of nerve impingement.

On August 16, 2007 Dr. Carpenter excused appellant from work August 8 through 19, 2007. She opined that appellant could perform light duty and provided restrictions. On August 23, 2007 Dr. Carpenter reported that appellant was incapacitated from work June 25 through August 19, 2007.

On August 31, 2007 Dr. James J. Lu, a neurologist, extended appellant's work restrictions. He limited lifting to no more than 10 pounds and restricted her from activities involving prolonged standing. Dr. Lu opined that appellant should not stand longer than 15 minutes.

On October 4, 2007 Dr. Carpenter reviewed appellant's history of injury and course of treatment. She attributed appellant's condition to a June 27, 2007 incident when she injured herself at work. Dr. Carpenter noted that, on the date in question, appellant had been working on a loading dock lifting mail. She reported that an MRI scan revealed a small focal disc herniation with an annular tear.

Appellant submitted reports documenting the number of trailers and the quantity of mail in her unit on June 22, 2007.

By decision dated October 29, 2007, the Office denied the claim because the evidence of record did not establish that appellant's medical condition was caused by the established work-related incident.

On October 27, 2008 appellant requested reconsideration.

Appellant submitted an October 9, 2007 statement from Edward Caruthers, coworker, reporting that he and she were the only two employees working the South dock on June 22, 2007. Mr. Caruthers described the employment duties he and appellant performed on the date in question.

Appellant submitted an August 31, 2007 report, in which Dr. Lu presented findings on examination and described her employment duties. Dr. Lu diagnosed back pain and recommended aggressive conservative treatment including physical therapy.

Appellant submitted weight labels from containers and equipment she pushed and lifted. She submitted copies of reports documenting how many trailers and how much mail was in her unit on June 22, 2007.

Appellant submitted an April 2, 2008 note in which Dr. Carpenter reviewed her course of treatment. Dr. Carpenter opined that her back pain "stems from the initial injury she sustained while bending, lifting and loading packages at her job as postal worker."

By decision dated December 3, 2008, the Office denied modification of its October 29, 2007 decision because the evidence of record did not demonstrate that the established employment incident caused an injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[2] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[3] As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.[4] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[5]

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 he or she actually experienced the employment

[1] 5 U.S.C. §§ 8101-8193.

[2] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan,* 20 ECAB 55, 58 (1968).

[3] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *G.T., supra* note 3; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

[5] *Jennifer Atkerson,* 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

incident at the time, place and in the manner alleged.[6] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

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 which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.

ANALYSIS

Appellant's burden is to demonstrate that the established employment incident caused a medically diagnosed condition. As noted above, causal relationship is a medical issue that can only be proven through production of probative, rationalized medical opinion evidence and, therefore, her additional factual evidence lacks probative value. Appellant has not submitted sufficient probative medical opinion evidence and, therefore, has not met her burden of proof.

Dr. Carpenter's April 2, 2008 note has little probative value on the issue of causal relationship because it lacks an opinion explaining how the established employment incident caused a medically diagnosed condition or describing the mechanism of injury.[8] The opinion of a 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 a medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factor.[9] Dr. Carpenter did not present findings on examination, a review of appellant's medical history or diagnose a compensable injury. Although she opined that appellant's pain "stems from the initial injury she sustained while bending, lifting and loading packages at her job as postal worker," pain is a symptom, not a compensable diagnosis.[10] Thus, Dr. Carpenter's note lacks probative value because it is not based on an accurate history of injury, provides no medical rational to explain the cause of appellant's diagnosed condition and lacks a diagnosis of a compensable injury. In her October 4, 207 report, Dr. Carpenter related that appellant's MRI scan examination revealed a small focal disc herniation with an annular tear. She opined that

[6] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[7] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[8] *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). *Franklin D. Haislah*, 52 ECAB 457 (2001); *see also, Jimmie H. Duckett*, 52 ECAB 332 (2001).

[9] *Roy L. Humphrey*, 57 ECAB 238 (2005).

[10] *C.F.*, 60 ECAB __ (Docket No. 08-1102, issued October 10, 2008) (pain is a symptom, not a compensable medical diagnosis).

appellant had been lifting mail on a loading dock on June 27, 2007 when she injured herself. Dr. Carpenter, however, never related an awareness of the weight of the mail appellant lifted on the date in question and she never offered a rationalized medical explanation of how the alleged lifting would have caused this diagnosed condition.

Dr. Lu's August 31, 2007 report and Dr. Niebruegge's July 18, 2007 report have little probative value on the issue of causal relationship because they too lack an opinion explaining how the established employment incident caused a medically diagnosed condition.[11] Dr. Lu diagnosed appellant with back pain. However, as noted above, pain is not a compensable diagnosis.[12] These deficiencies reduce the probative value of Dr. Lu's opinion such that his report does not satisfy appellant's burden of proof. Dr. Niebruegge made no statement on casual relationship.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.[13] While she submitted a description of her employment duties to the Office for consideration, the record does not substantiate that she informed her physicians of the work duties she performed on June 22, 2007, such that the physicians of record could provide a well-rationalized opinion regarding causal relationship.

Appellant has not submitted sufficient probative, rationalized medical opinion evidence. Therefore, the Board finds that she has not established that she sustained an injury in the performance of duty on June 22, 2007, causally related to her employment.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on June 22, 2007, causally related to her employment.

[11] *Supra* note 8.

[12] *Supra* note 10.

[13] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007)*; Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

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

Issued: March 1, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board