United States Department of Labor
Employees' Compensation Appeals Board

C.M., Appellant	)	
and	)	**Docket No. 10-1010**
	)	**Issued: February 23, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Springfield, MO, 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 18, 2010 appellant filed a timely appeal from a September 15, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a recurrence of disability in July 2008 causally related to her August 16, 2005 employment injury; and (2) whether appellant sustained a lumbar radiculopathy condition in the performance of duty.

FACTUAL HISTORY

Appellant, a 36-year-old mail carrier, injured her low back on August 16, 2005 while trying to avoid a dog which jumped through a glass door at her. The Office accepted a sacroiliac ligament sprain and lumbar sprain.

In an August 17, 2005 report, Dr. Thomas Pirotte, a Board-certified family practitioner, stated that appellant had tenderness in the left lower lumbar paraspinous musculature, the left

sacroiliac and the contiguous lateral buttock musculature. He advised that the remainder of the low back examination was unremarkable, noting that bilateral straight leg raising did not demonstrate typical radiculopathic pain. Dr. Pirotte diagnosed lumbar and sacroiliac strain.

In a report dated August 24, 2005, Dr. Pirotte advised that appellant had a persistent lumbar and sacroiliac strain and was still experiencing soreness and tenderness in the left lumbar, sacroiliac and buttock areas. On September 1, 2005 he reiterated his findings.

In a report dated September 8, 2005, Dr. William Berner, a specialist in occupational medicine, advised that appellant's low back strain had not improved. Appellant continued to experience low back pain which occasionally radiated into the left posterior thigh area.

In a September 13, 2005 report, Dr. Pirotte noted that appellant had undergone a magnetic resonance imaging (MRI) scan which showed a disc protrusion at L4-5, with left neural foraminal stenosis. On examination, appellant had diffuse moderate tenderness of the left lumbar paraspinous area and decreased tenderness in the left sacroiliac and left buttock regions. Dr. Pirotte planned to return appellant to work on modified duty with restrictions.

In a September 27, 2005 report, Dr. Edwin Cunningham, Board-certified in neurosurgery, stated that appellant had left lower extremity pain in her L5 distribution. Appellant had a five-week history of left sciatica from August 16, 2005 but did not currently have any significant back pain or significant right lower extremity symptoms. She reported intermittent pain which was occasionally severe. Dr. Cunningham advised that the September 9, 2005 MRI scan demonstrated good alignment of the lumbar spine with mild degenerative disc disease present at the L4-5 level, mild loss of disc height and loss of T2 signal hyperintensity. He noted a small disc bulge at the L4-5 level to the left, with no significant neural compression foraminal stenosis. Dr. Cunningham diagnosed mild L5 radiculopathy secondary to the small disc bulge.

In a report dated October 25, 2005, Dr. Cunningham stated that appellant had moderate low back pain with left lower extremity pain down the posterior thigh, radiating into the calf. He reviewed her lumbar MRI scan and found no evidence of neural compression or significant abnormality accounting for her sciatica-type symptoms.

Appellant filed a claim on July 24, 2008 for a traumatic injury that allegedly occurred on July 23, 2008, when she stepped and jerked forward. The Office denied this claim, finding that she did not submit medical evidence sufficient to support her claim.[1]

In a July 25, 2008 report, Dr. Jeffrey L. Woodward, Board-certified in physical medicine and rehabilitation, stated that appellant experienced ongoing left-sided low back pain, with no specific reinjury event since her previous examination. Appellant related that her overall back pain had gradually worsened in the past few months. She rated the severity a four on a scale of one to ten at its best and an eight out of ten at its worst, aggravated by lumbar flexion, sitting and walking. Dr. Woodward diagnosed lumbago and lumbar radiculopathy.

[1] This claim was combined with the present claim on appeal.

On January 9, 2009 appellant filed an occupational disease claim, number xxxxxx622. The employing establishment indicated that she had already filed for a claim under the present case. It asserted that appellant's claim was not filed due to an injury but that she filed the claim after being notified of her removal. The Office advised her on February 3, 2009 that the claim she filed, under number xxxxxx622 would be administratively closed while her appeal was pursued.

By letter dated February 3, 2009, the Office advised appellant that she appeared to be claiming a recurrence of her August 16, 2005 injury. It asked her to provide medical and factual evidence in support of her claim. The Office informed appellant that was required to provide medical evidence demonstrating that her claimed recurrence constituted a spontaneous worsening of a work-related condition without new injury or exposure to work factors. Appellant did not submit any additional evidence within 30 days.

By decision dated March 6, 2009, the Office denied appellant's claim, finding that the evidence was insufficient to establish that she sustained a recurrence of her work-related disability as of June 2008.

On March 9, 2009 appellant requested an oral hearing, which was held on June 15, 2009.

Appellant's representative asserted at the hearing that the Office should have accepted lumbar radiculopathy based on the medical evidence of record. Appellant testified that, after the August 2005 work injury, she returned to full duty in January 2006. She did not miss any time from work from January 2006 to June 2008. Appellant experienced aching and stabbing back pain in July 2008 and was advised to stop work at that time. Her physician diagnosed a work-related lumbar strain with lumbar radiculopathy and disc protrusion. Appellant also told her that her employment activities had a direct effect on her condition and constituted a reaggravation of her prior work injury. The hearing representative noted that appellant's testimony suggested that she was claiming both a work-related lumbar radiculopathy condition, which was not accepted by the Office, and a recurrence of disability causally related to her August 16, 2005 lower back injury. Both issues would be adjudicated.

Following the hearing, appellant submitted reports from Dr. Woodward. In a July 30, 2008 treatment note, Dr. Woodward advised that appellant was off work due to work-related lumbar strain and lumbar radiculopathy. In an August 1, 2008 report, he stated that appellant complained of severe left lower lumbosacral pain, a five out of ten on a scale of one to ten at best and nine out of ten at its worst. The pain was aggravated by her daily activities.

On August 22, 2008 Dr. Woodward stated that repetitive lifting, repetitive climbing in and out of her mail vehicle, prolonged lifting, carrying and walking on a daily basis caused her current lumbar condition. He reiterated the diagnoses of lumbago and lumbar radiculopathy. Appellant noted that lifting and prolonged walking at work had caused severe lumbar and leg pain in July 2008; she also noted a prior work-related lumbar radiculopathy in 2003. Dr. Woodward stated that a 2006 MRI scan showed left L4-5 disc protrusion and neural impingement stemming from the 2005 work injury, consistent with her current symptoms.

In a September 22, 2008 report, Dr. Woodward advised that appellant's current lumbar radiculopathy condition was a reaggravation of the 2005 work injury, with recent repetitive bending and lifting with mail delivery causing reaggravation. Her lumbar radicular pain had resolved until this most recent work injury, which caused an acute reinjury to the lumbar region with resulting lumbar radiculopathy, lower extremity pain and numbness.

Appellant submitted a January 27, 2009 for a left L4-5 hemilaminotomy. The procedure was performed by Dr. Cunningham, who diagnosed left L4-5 lateral recess stenosis with compression of left L5 root, left L4-5 disc bulges with left L5 radiculopathy.

By decision dated September 15, 2009, an Office hearing representative affirmed the March 6, 2009 decision.

LEGAL PRECEDENT -- ISSUE 1

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which has resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.[2] A person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[3] Where no such rationale is present, medical evidence is of diminished probative value.[4]

In order to establish that a claimant's alleged recurrence of the condition was caused by the accepted injury, medical evidence of bridging symptoms between her present condition and the accepted injury must support the physician's conclusion of a causal relationship.[5]

The Office's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return as needed, or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an attending physician's report, which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.[6]

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[2] *R.S.*, 58 ECAB 362 (2007); 20 C.F.R. § 10.5(x).

[3] *I.J.*, 59 ECAB 408 (2008); *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

[4] *See Ronald C. Hand*, 49 ECAB 113 (1957); *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988)

[5] *Mary A. Ceglia*, 55 ECAB 626 (2004).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5(b) (January 1995).

ANALYSIS -- ISSUE 1

The Board finds that appellant failed to submit sufficient medical evidence providing a rationalized opinion which relates her claimed recurrence of disability as of July 2008 to her accepted lumbar and sacroiliac ligament sprain conditions. For this reason, appellant did establish that she sustained a recurrence of disability as a result of her accepted conditions.

The Office accepted appellant's August 16, 2005 employment injury for lumbar and sacroiliac ligament sprains. Appellant returned to full duty in January 2006 and worked until June 2008, when she began to miss work intermittently. In July 2008, she stopped work. Appellant filed claims for an occupational condition in August 2008 and January 2009, which were ultimately combined and adjudicated by the Office as a claim for a recurrence of her work-related disability. Dr. Woodward advised in a July 25, 2008 report that appellant was experiencing left-sided low back pain attributable to the August 16, 2005 work injury. He stated that appellant did not mention any specific reinjury event since her previous examination. The Office requested additional medical evidence contemporaneous to support appellant's claim for a recurrence of disability; however, she did not respond. Based on the evidence of record, the Office properly denied benefits for a recurrence of disability in a March 6, 2009 decision.

Appellant subsequently submitted reports from Dr. Woodward dated July through August 2008. Dr. Woodward advised that she stopped work in July 2008 due to work-related lumbar strain, lumbago and lumbar radiculopathy. In an August 22, 2008 report, he related that appellant attributed her condition to lifting and prolonged walking at work. These statements indicate that her condition worsened due to new employment incidents, not as a spontaneous recurrence of her 2005 injury. Dr. Woodward opined that appellant's regular work activities, which included repetitive lifting, repetitive climbing in and out of her vehicle, prolonged lifting, carrying and walking, had caused her current lumbar symptoms. In a September 22, 2008 report, he advised that her prior lumbar radicular pain had resolved until her most recent work injury, which caused an acute reinjury to the lumbar region with lumbar radiculopathy and lower extremity pain with numbness. Dr. Woodward opined that appellant's current lumbar radiculopathy condition was an aggravation of the 2005 work injury, caused by the recent repetitive bending and lifting. His reports do not explain how her accepted 2005 lumbar and sacroiliac sprains contributed to her condition and disability as of July 2008. There is no bridging evidence of medical treatment between August 16, 2005 and July 25, 2008 and appellant had been released to regular duty as of January 2006. Although Dr. Woodward made reference to the August 16, 2005 work injury, he failed to address how appellant's medical treatment beginning July 25, 2008 was due to the accepted injury.[7] Rather, he implicated her new occupational activities.

Appellant contends that her January 27, 2009 lumbar surgery was causally related to the August 16, 2005 employment injury. The Board finds that the medical evidence of record is insufficient to support a causal relationship between the January 2009 surgery and her accepted

[7] *See Mary A. Ceglia, supra* note 5 (appellant has the burden of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound rationale).

lumbar sprains.[8] Appellant has the burden of proof to submit rationalized medical evidence establishing the relationship of the claimed recurrence to the original injury. The record establishes that the August 2005 injury was accepted for lumbar and sacroiliac strains. Appellant did not submit a physician's reasoned opinion explaining how the accepted conditions caused or contributed to her lumbar symptoms in 2008 or necessitated surgery for an L4-5 hemilaminectomy. For these reasons, the medical evidence of record is insufficient to establish a recurrence of disability causally related to the accepted lumbar and sacroiliac conditions.[9] The Board will affirm the denial of appellant's claim for a recurrence of disability beginning July 2008.

LEGAL PRECEDENT -- ISSUE 2

An employee seeking benefits under the Federal Employees' Compensation Act[10] 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.[11] 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.[12]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. 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 the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be

[8] 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. *See K.W.*, 59 ECAB 271 (2007).

[9] The Board notes that the record contains several reports from physical therapists who treated appellant for her accepted lumbar, thoracic and cervical conditions. However, these reports are is of no probative value, as physical therapists are not considered physicians under the Act and as a result, they are not competent to provide a medical opinion. *Barbara J. Williams*, 40 ECAB 649 (1989). *A.C.*, 60 ECAB __ (Docket No. 08-1453, issued November 18, 2008); 5 U.S.C. § 8101(2).

[10] 5 U.S.C. §§ 8101-8193.

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

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

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.[13]

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his claimed right shoulder condition and his federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[14]

ANALYSIS -- ISSUE 2

Appellant attributed her lumbar radiculopathy condition to factors of her employment.

Appellant submitted reports from Dr. Pirotte and Dr. Berner, neither of whom noted any symptoms of radiculopathy during their examinations of appellant. On August 17, 2005 Dr. Pirotte noted tenderness in the left lower lumbar paraspinous musculature, the left sacroiliac and the contiguous lateral buttock musculature, but stated that bilateral straight leg raising did not demonstrate typical radiculopathic pain. Dr. Cunningham diagnosed mild L5 radiculopathy, secondary to a small disc bulge, with left lower extremity discomfort in September 27, 2005 report. He stated, however, that appellant did not have any significant back pain or significant right lower extremity symptoms, but had intermittent symptoms which was occasionally severe. Dr. Cunningham reviewed a September 9, 2005 MRI scan which showed good alignment of the lumbar spine with mild degenerative disc disease present at the L4-5 level, with mild loss of disc height and loss of T2 signal hyperintensity, a small disc bulge at the L4-5 level eccentric to the left and no significant neural compression as a result of the disc bulge and no foraminal stenosis. He reviewed the September 2005 MRI scan on October 25, 2005 and found no evidence of neural compression or significant abnormality accounting for her sciatica-type symptoms. These reports are not sufficient to establish appellant's lumbar radiculopathy as related to the August 16, 2005 injury.

Dr. Woodward diagnosed lumbar radiculopathy in a July 25, 2008 report and indicated that appellant had mostly mild complaints of pain in the lumbar spine. On July 30, 2008 he advised that appellant was off work due to work-related lumbar strain and lumbar radiculopathy. On August 22, 2008 Dr. Woodward reiterated that appellant had lumbar radiculopathy and opined that her current lumbar condition was attributable to repetitive lifting, repetitive climbing in and out of her mail vehicle, prolonged lifting, carrying and walking on a daily basis. On September 22, 2008 he noted appellant's current lumbar radiculopathy condition was a reaggravation of the 2005 work injury, with recent repetitive bending causing an acute aggravation. Dr. Woodward stated that her lumbar radicular pain had previously resolved until this most recent work injury, which caused an acute reinjury to the lumbar region.

[13] *Id.*

[14] *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

None of the physicians of the record provided an adequate explanation with medical rationale addressing how appellant's lumbar radiculopathy was due to either the 2005 injury or to more recent factors of employment in 2008.[15] The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[16] Drs. Cunningham and Woodward diagnosed lumbar radiculopathy which they generally attributed to employment factors. They did not sufficiently describe appellant's job duties or explain the medical process through which such duties were competent to cause the condition. The opinions of these physicians are of reduced probative value as they do not provide medical rationale explaining how appellant's job duties caused or contributed to lumbar radiculopathy. The reports submitted by appellant are not sufficient to establish that her lumbar radiculopathy condition as causally related to her employment.

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.[17] Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence. The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof.

CONCLUSION

The Board finds that appellant did not establish that she sustained a recurrence of disability as of July 2008 causally related to her accepted lumbar and sacroiliac sprains. The Board also finds that she did not establish that her lumbar radiculopathy condition was sustained in the performance of duty.

[15] *William C. Thomas*, 45 ECAB 591 (1994).

[16] *See Anna C. Leanza*, 48 ECAB 115 (1996).

[17] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 23, 2011
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