United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 10-2090**
	)	**Issued: June 2, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Lake Charles, LA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 12, 2010 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 16, 2010 merit decision denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] and 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 a traumatic injury while in the performance of duty on December 2, 2008.

FACTUAL HISTORY

On May 1, 2009 appellant, a 40-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 2, 2008 she sustained an injury to her muscles and nerves on the right side from her buttocks down to her feet as a result of lifting a package

[1] 5 U.S.C. § 8101 *et seq.*

weighing over 10 pounds. She stated that she asked for help and "was told to do it."[2] The employing establishment controverted the claim, noting that appellant did not report the alleged incident until she filed her claim form.

On May 12, 2009 the Office notified appellant that the evidence submitted was insufficient to establish her claim and advised her to provide, within 30 days, additional documentation, including a firm diagnosis and a physician's opinion as to how her injury resulted in the diagnosed condition. It asked her to provide a detailed description as to how the injury occurred, including the cause of the injury, statements from any witnesses or other documentation supporting her claim and the reason she delayed seeking medical treatment.

Appellant submitted December 15, 2008 emergency room records from Christus St. Patrick Hospital. Dr. John Burton, Board-certified in the field of family medicine, indicated that appellant's chief complaint was right hip pain. Nursing notes reflected that appellant complained of burning and numbness in the right leg. Appellant had an old injury in the right leg, but the pain had worsened over the previous several days.

In a February 9, 2009 report, Dr. Sandra D.M. Bruno, a Board-certified internist, stated that appellant was originally injured on July 25, 2008. On December 8, 2008 appellant reported that her supervisor instructed her to lift items at work which exceeded her weight restrictions, resulting in increased pain and a subsequent decline in functional status. In an accompanying duty status report, Dr. Bruno indicated that appellant was disabled from performing her employment duties.

On June 2, 2009 appellant stated that, on the date in question, she was working limited duty. Her supervisor refused her request to assist her in lifting a package weighing between 50 and 60 pounds. Instead, the supervisor gave appellant a direct order to handle and deliver the package. Appellant lifted the package, placed it in a cart, pushed the cart to a jeep and placed the package into the jeep. Upon delivering the package, she lifted the package from the jeep. Appellant alleged that her injury was aggravated because her medical restrictions were not followed.

In a merit decision dated June 22, 2009, the Office denied appellant's claim. It found that the evidence was insufficient to establish that the claimed event occurred as alleged or that she had a diagnosed condition which could be connected to the claimed event.

On January 13, 2010 appellant requested reconsideration.

In a November 17, 2009 letter, Dr. Bruno stated that appellant developed piriformis syndrome as a result of a July 25, 2008 injury. Appellant returned to work with a 10-pound lifting restriction. On October 22, 2008 she informed Dr. Bruno that the employing establishment had overworked her on the preceding weekend and that she missed work due to increased leg pain. Appellant further related that on December 2, 2008 her supervisor instructed

[2] Appellant has filed five previous traumatic injury claims: File No. xxxxxx667 (DOI July 7, 2002); File No. xxxxxx699 (DOI April 24, 2003); File No. xxxxxx742 (DOI September 1, 2005); File No. xxxxxx211 (DOI June 5, 2008); and File No. xxxxxx657 (DOI July 5, 2008), which was accepted for neck and lumbar sprains.

her to lift an item weighing more than 10 pounds. Dr. Bruno stated that on December 8, 2008 she saw appellant "reinjured" with increased pain in her right buttock radiating down her right leg with every step she took.

On December 8, 2009 appellant stated that she was reinjured on the job on December 2, 2008 when she lifted a heavy package in violation of her work restrictions. After delivering the package, she returned to the employing establishment and went directly to Supervisor Shelby Fruge's office and told him that she "was hurting." Mr. Fruge reportedly told appellant that there was nothing wrong with her and that she would be disciplined if she called in sick.

In a March 2, 2010 statement, Supervisor Fruge indicated that on the date in question appellant was working with restrictions. He denied instructing her to deliver a package in violation of her restrictions. Mr. Fruge stated that appellant asked to take leave without pay to attend a friend's funeral, because she had no available leave balance. After the supervisor denied her request, appellant called in sick for the day she requested and did not return for two months.

By decision dated March 16, 2010, the Office denied modification of its June 22, 2009 decision on the grounds that she had failed to establish fact of injury.

LEGAL PRECEDENT

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.[3] 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."[4]

An employee seeking benefits under the Act has the burden of proof to establish 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 or specific condition for which compensation is claimed is causally related to the employment injury.[5] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, he must submit sufficient evidence to establish that he experienced a specific event, incident or

[3] 5 U.S.C. § 8102(a).

[4] 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); s*ee also Bernard D. Blum*, 1 ECAB 1 (1947).

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

exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.[6]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[7]

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.[8] An award of compensation may not be based on appellant's belief of causal relationship. 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.[9]

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.[10]

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a traumatic injury to her right lower extremity on December 2, 2008. Appellant's presentation of the facts is not supported by the evidence of record and does not establish her allegation that a specific incident occurred on the date in question.[11] Moreover, there are inconsistencies in the evidence which cast serious doubt on the validity of her claim.

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

[7] *See Betty J. Smith, id.*

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

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

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

[11] *See Dennis M. Mascarenas, supra* note 9.

Appellant initially reported on her May 1, 2009 CA-1 form that she sustained an injury to her muscles and nerves on the right side from her buttocks down to her feet as a result of lifting a package weighing over 10 pounds on December 2, 2008. She provided no detailed account of the incident, as required in a traumatic injury claim. Appellant subsequently testified that her supervisor refused her request to assist her in lifting a package weighing between 50 and 60 pounds. Instead, the supervisor gave her a direct order to handle and deliver the package. Appellant lifted the package, placed it in a cart, pushed the cart to a jeep, placed the package into the jeep. Upon delivering the package, she lifted the package from the jeep. Appellant alleged that her injury was aggravated because her medical restrictions were not followed. Her allegations are vague, however, and do not relate with specificity the circumstances, the time or the exact and immediate consequences of the injury (*e.g.,* whether she experienced pain with any particular movement, whether she fell, whether she was unable to continue walking, whether she cried out).

Appellant's subsequent course of action also fails to support her claim. She did not seek medical treatment for six days following the alleged incident. Moreover, appellant delayed nearly five months in filing her traumatic injury claim. She provided no statements to corroborate her claim from anyone who either witnessed or to whom she immediately reported the incident. Appellant alleges that she immediately informed her supervisor of the incident. The employing establishment, however, denied her allegation and controverted the claim. The Board notes that appellant did not claim to have informed her supervisor of the incident until December 8, 2009, following the initial denial of her claim and one year after the claimed event.

Appellant's claim is further undermined by inconsistencies in the evidence. In her Form CA-1, she alleged that she injured her right lower extremity when she lifted a package on December 2, 2008. On December 15, 2008, however, appellant informed the emergency room staff that she had an old injury in the right leg, but the pain had worsened over the previous several days. The hospital records do not contain any reference to the claimed December 2, 2008 incident.

Appellant has failed to establish fact of injury. She did not submit sufficient evidence to establish that she experienced the alleged employment incident at the time, place or in the manner alleged or that it caused her condition. Therefore, the Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on December 2, 2008.[12]

On appeal, appellant contends that there is no evidence to support the employing establishment's version of the facts. She stated that Supervisor Fruge was terminated for falsifying documents. As noted, it is appellant's burden to establish that she sustained an injury in the performance of duty. For reasons stated, the Board finds that she failed to meet that burden. Additionally, there is no evidence of record supporting appellant's statements about Supervisor Fruge or showing how the alleged behavior might be relevant to the issue in this case.

[12] As appellant failed to establish that the claimed event occurred as alleged, it is not necessary to discuss the probative value of medical evidence. *Id*.

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained a traumatic injury to her right lower extremity in the performance of duty on December 2, 2008.

ORDER

IT IS HEREBY ORDERED THAT the March 16, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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