United States Department of Labor
Employees' Compensation Appeals Board

E.B., Appellant	)	
and	)	**Docket No. 13-1705**
	)	**Issued: January 8, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Corpus Christi, TX, Employer	)	

Appearances:
Richard A. Daniels, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 9, 2013 appellant filed a timely appeal from the January 10, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 established that she sustained a traumatic injury in the performance of duty on June 24, 2010.

FACTUAL HISTORY

On March 11, 2011 appellant, then a 40-year-old mail clerk, filed a traumatic injury claim (Form CA-1) alleging a lumbar spine injury from twisting her torso in the performance of duties on June 24, 2010. She was asked to process mail in a manner that required a twisting motion that caused her to reinjure her back. Appellant included a witness statement from

[1] 5 U.S.C. § 8101 *et seq.*

Gary Burt, a coworker, who saw her ask Heriberto Sepulveda, her supervisor, to help her with a task and that he agreed. She told him the next day that Mr. Sepulveda had refused to help, which resulted in a recurrence of her injury. The employing establishment controverted her claim, stating that appellant was not injured in the performance of duty. Appellant was not asked to lift a tray of mail and never asked her supervisor to get someone else to do the work. Further, her claim was not submitted within 30 days of the alleged injury.

By letter dated April 5, 2011, OWCP requested additional factual and medical evidence. It advised appellant to support the factual incident of June 24, 2010 together with medical evidence of injury from a physician. OWCP afforded her 30 days to submit additional evidence.

In a report dated November 24, 2010, Dr. Michael Kilgore, a family practitioner, stated that appellant was seen on June 25, 2010 with severe pain in the lumbar spine. Appellant stated that her employer knowingly overworked her despite being aware that she had severe back pain and light-duty work restrictions. On physical examination, Dr. Kilgore found that she had paravertebral muscle spasms to the lumbar spine. He stated that appellant's lumbar spine condition was exacerbated by the employing establishment's noncompliance with her work restrictions.

By letter dated August 25, 2010, Mr. Sepulveda, appellant's supervisor, stated that he never asked appellant to perform any task that would violate her work restrictions. At the time of the alleged incident, he was helping her to process mail and had lifted every tray. Mr. Sepulveda did not observe appellant's work in a manner likely to cause injury. He was not notified about the alleged incident until August 24, 2010.

By decision dated May 10, 2011, OWCP denied appellant's claim, finding that neither the factual nor the medical evidence was sufficient to establish that she sustained a traumatic injury on June 24, 2010.

In a duty status report (Form CA-17) dated April 12, 2011, Dr. Kilgore listed appellant's work restrictions, which limited twisting to one hour per day. He limited lifting to six hours a day with a maximum continuous weight of 35 pounds and a maximum intermittent weight of 70 pounds.

By letter dated November 28, 2011, appellant's representative requested reconsideration of the May 10, 2011 decision.

In a narrative report dated November 14, 2011, Dr. Kilgore stated that appellant had informed him that on June 24, 2010 she was asked to work on a large bulk mailing that was beyond her work restrictions because it involved lifting and twisting. After appellant finished the task, she experienced a significant increase in lumbar pain. Dr. Kilgore had provided work restrictions in 2006 due to a work-related injury, which had caused lumbar intervertebral displacement and herniations. He noted that appellant was able to work at a modified-duty position without difficulty prior to the incident. Dr. Kilgore stated that within a reasonable degree of medical certainty the twisting and lifting appellant performed on June 24, 2010 caused paravertebral muscle spasms in the lumbar spine.

By decision dated January 27, 2012, OWCP denied appellant's claim. It found that she did not establish the incident of June 24, 2010 as alleged. OWCP also found that appellant failed

to submit rationalized medical evidence to support that the work activities caused or contributed to her low back condition. It noted that "you have not provided any evidence supporting your contentions of being requested to process the mailings, which you believed caused the claimed conditions."

By letter dated June 9, 2012, appellant's representative requested reconsideration of OWCP's January 27, 2012 decision.

In a statement dated October 12, 2010, Mr. Burt related that he witnessed the incident of June 24, 2010. Appellant explained her work restrictions to Mr. Sepulveda and asked if someone else could perform the work of processing mail. She went to her office and received more mailing, at which time she again asked her supervisor to find someone else as her back injury rendered her incapable of the task. Mr. Burt heard Mr. Sepulveda tell appellant to take care of the bulk mailing and that he would help her. Appellant began to verify the bulk mailing while Mr. Sepulveda went to look for a hamper in which to place the trays after verification. Mr. Burt left the area and appellant told him the next day that she was in pain due to the lifting and twisting required for processing bulk mailing.

By decision dated November 8, 2012, OWCP denied appellant's claim. It found that she did not submit sufficient medical evidence to support that her medical condition was related to her work activities. OWCP noted that Dr. Kilgore made a statement of reasonable medical certainty, but that it was not contemporaneous to the claimed incident and without any medical rationale or objective findings based on a physical examination.

By letter dated November 16, 2012, appellant's representative requested reconsideration of the November 8, 2012 decision. Counsel noted that Dr. Kilgore's November 14, 2011 report was an addendum to that of November 24, 2010, which was based on a physical examination performed on June 25, 2010.

By decision dated January 10, 2013, OWCP denied appellant's claim, on the grounds that she had not submitted adequate medical evidence addressing causal relation. It did not specifically address the June 24, 2010 incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury[3] was sustained in the performance of duty as alleged

[2] 5 U.S.C. §§ 8101-8193.

[3] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4]

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. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient medical evidence to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[5]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[6] 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.[7] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS

Appellant alleged that on June 24, 2010 she sustained injury to her lumbar spine due to twisting while processing bulk mail. The Board finds that the evidence of record is sufficient to establish that she processed bulk mailing that day, at the request of her supervisor. The Board finds however that appellant has not submitted sufficient medical evidence to establish that she sustained a low back injury as a result of the incident.

Appellant alleged that she sustained a lumbar injury after twisting her spine in the performance of duty on June 24, 2010. She was asked to process mail in a manner that required a twisting motion. Appellant submitted a witness statement from Mr. Burt, who observed her and Mr. Sepulveda discuss the bulk mail assignment. Mr. Burt noted that she began to perform the work with the assistance of her supervisor, who went to look for a mail hamper.

By letter dated August 25, 2010, Mr. Sepulveda stated that he did not ask appellant to perform tasks that would violate her work restrictions. He acknowledge that he was helping her process mail but had lifted every tray. Mr. Sepulveda did not observe appellant working in a

[4] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Id*. *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[6] *See J.Z.*, 58 ECAB 529, 531 (2007)*; Paul E. Thams*, 56 ECAB 503, 511 (2005).

[7] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *James Mack*, 43 ECAB 321, 329 (1991).

manner likely to cause injury to herself. Further, he noted that he was not notified of an injury until August 24, 2010.

The Board finds that appellant established that she processed bulk mailings on June 24, 2010 as alleged. There are no such inconsistencies in the evidence as to cast serious doubt upon the validity of her claim. Appellant sought medical treatment within a day of the incident and informed her coworker the next day of her injury. While the employing establishment controverted her claim, the record supports that she performed mail processing work as directed by her supervisor. The coworker's account is consistent with appellant's description of her duties that day. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[9] There is no strong or persuasive evidence to refute appellant's account of the incident. The fact that she may have been assisted by her supervisor is not sufficient grounds to discount the work she performed.

The issue is whether appellant sustained a low back injury on June 24, 2010. On November 24, 2010 Dr. Kilgore stated that she had visited his office on June 25, 2010 with severe pain in the lumbar spine. Appellant stated that her employer overworked her despite being aware of her pain and despite her light-duty work restrictions. Dr. Kilgore found that she had paravertebral muscle spasms to the lumbar spine. He stated that appellant's lumbar spine condition was exacerbated by the employing establishment's noncompliance with her work restrictions. On November 14, 2011 Dr. Kilgore stated that appellant had informed him that on June 24, 2010 she was asked to work on a large bulk mailing that was beyond her work restrictions because it involved lifting and twisting. He noted that he had provided restrictions in 2006 due to a prior work-related injury and that she worked in a modified-duty position without difficulty prior to the claimed incident. Dr. Kilgore stated to a reasonable degree of medical certainty that the twisting and lifting appellant performed on June 24, 2010 caused paravertebral muscle spasms in the lumbar spine.

The Board finds that the medical evidence from Dr. Kilgore is not sufficient to establish causal relation. The Board notes 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 incident identified by the employee.[10] Dr. Kilgore's reports do not provide a complete factual and medical background of appellant's low back treatment. He briefly maintained prior work restrictions from 2006 without further detail. Dr. Kilgore's reports do not contain medical rationale explaining the nature of the relationship between appellant's low back condition to the traumatic incident of June 24, 2010. He stated generally that twisting and lifting caused an injury, but failed to adequately address the nature or extent of the work performed or how the specific employment duties caused or contributed to her claimed injury. Further, the Board has noted that muscle spasm is generally a symptom rather than a firm diagnosis.[11] Dr. Kilgore's impression of paravertebral lumbar spasms on July 25, 2010 does not

[9] *D.B.*, 58 ECAB 464, 466-67 (2007); *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

[10] *See supra* note 7.

[11] *J.S.*, Docket No. 07-881 (issued August 1, 2007).

explain how the accepted activities aggravated or contributed to any prior disc displacement or herniation.

On appeal, appellant's representative argues that Dr. Kilgore's medical reports are sufficient to establish appellant's claim. As noted, Dr. Kilgore did not provide sufficient explanation for his stated conclusions.

The Board finds that appellant did not establish the medical component of fact of injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on June 24, 2010, as alleged. Therefore, appellant has failed to meet her burden of proof to establish a claim for compensation.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: January 8, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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