

)	
ERIC A. ROGERS, Appellant)	
)	
and)	Docket No. 04-292
)	Issued: March 17, 2004
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, PHOENIX AIRPORT,)	
Phoenix, AZ, Employer)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

Appellant filed an appeal on November 13, 2003 of a September 17, 2003 decision of the Office of Workers' Compensation Programs, finding that he had not established that he sustained an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue on appeal is whether appellant sustained an injury in the performance of duty on May 10, 2003 as alleged.

On May 11, 2003 appellant, then a 43-year-old baggage screener, filed a traumatic injury claim for low back and right arm strains sustained on May 10, 2003 while transporting “heavy bags ... from bag cart to airlines recheck area.” In the portion of the form entitled, “Supervisor’s Report,” Michael Canidate, appellant’s supervisor, stated that the claimed May 10, 2003 incident

“happened on my day off and the supervisor on duty was not informed.” Appellant stopped work on May 12, 2003. The record does not indicate if or when appellant returned to work.

Dr. Jill Kerr, an attending osteopath, prescribed physical therapy on May 14, 2003 and a dual-function nerve stimulator unit on May 21, 2003.¹

In an August 6, 2003 letter, the Office requested that appellant explain the statement on his claim form that the injury occurred “on my day off” and identify its author. The Office also noted that the physical therapy notes and radiology reports of record were insufficient to establish causal relationship. In response, appellant submitted an undated form from Dr. Kerr noting that she first treated appellant on May 14, 2003. He diagnosed “biceps tendinitis” caused by “lifting [a] bag” on an unspecified date. Dr. Kerr checked a box “yes” indicating that the injuries were work related. She held appellant off work from May 14 to June 1, 2003.²

The employing establishment submitted August 12, 2003 statements by two of appellant’s coworkers, Robert Burt and Mary Katafiasz. Mr. Burt asserted that appellant asked him how “compensation benefits worked” a few weeks before filing his claim. Ms. Katafiasz alleged that appellant told her that he injured his “good hand” doing yard work at home while off work due to the claimed injuries and that his wife’s physician would write him a prescription for anything he wanted.

By decision dated September 17, 2003, the Office denied appellant’s claim on the grounds that he did not establish that the claimed injuries occurred in the performance of duty as he asserted that he was injured on his day off.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act³ 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 the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.⁴ These are the essential

¹ Appellant also submitted physical therapy notes dated May 21 to August 1, 2003 and July 25, 2003 physical therapy prescription. As these forms do not appear to have been reviewed or signed by a physician, they do not constitute medical evidence in this case. *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

² May 29, 2003 radiologic scans showed mild bursitis and early impingement syndrome of the right shoulder and a normal right elbow. These reports provide a history of “pain post accident,” but do not contain a date of injury or provide any additional explanation of causal relationship.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Tracey P. Spillane*, 54 ECAB ____ (Docket No. 02-2190, issued June 12, 2003); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁶ Second, the employee must submit sufficient evidence, usually only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

ANALYSIS

In this case, the Office found that appellant had not satisfied the first criteria of fact of injury as there was conflicting evidence regarding whether the claimed May 10, 2003 incident occurred at the time, place and in the manner alleged. The Office explained that, in his May 11, 2003 claim form, appellant asserted that the May 10, 2003 incident happened on his day off and not in the performance of duty. However, the Board finds that the Office’s interpretation of the claim form is in error. The statement that the May 10, 2003 incident “happened on my day off” appears in the “Supervisor’s Report” portion of the claim form signed by Mr. Canidate, appellant’s supervisor. In the employee’s portion of the form, appellant attributed his injury to moving heavy bags from a cart to a recheck area on May 10, 2003 while in the performance of duty. Also, his account of events is generally corroborated by Dr. Kerr, his attending physician, who first treated appellant on May 14, 2003 for biceps tendinitis related to “lifting [a] bag” on an unspecified date. The Board notes that the August 12, 2003 statements by appellant’s coworkers do not directly refute his account of the events of May 10, 2003. Therefore, the Board finds that appellant has submitted sufficient evidence to establish that the May 10, 2003 incident occurred as alleged.⁸

The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained low back or right upper extremity injuries on May 10, 2003 as alleged. He submitted notes and reports from Dr. Kerr dated May 14 and 21, 2003, as well as an undated report. The only report of record addressing causal relationship is the undated report, in which Dr. Kerr indicated with a checkmark that diagnosed biceps tendinitis was work related, attributable to lifting a bag on an unspecified date. However, the Board has held that an opinion on causal relationship which consists only of a physician checking “yes” to a medical form report question on whether the claimant’s condition was related to the history given is of little

⁵ *Janice Guillemette*, 54 ECAB ____ (Docket No. 03-1124, issued August 25, 2003); *Elaine Pendleton supra* note 4.

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *Deborah L. Beatty*, 54 ECAB ____ (Docket No. 02-2294, issued January 15, 2003).

⁸ *See Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002) (the Board found that slight inconsistencies between the claimant’s account of events and those of her supervisor and another witness were insufficient to impugn the validity of her claim).

probative value.⁹ In this case, while Dr. Kerr provided some explanation, she did not provide a date of injury or explain why lifting a bag would cause the diagnosed biceps tendinitis. The Board, therefore, finds this report of decreased probative value and insufficient to establish causal relationship.¹⁰ Therefore, the report is insufficient to meet appellant's burden of proof.

The Board notes that the Office advised appellant, in an August 6, 2003 letter, of the deficiencies in the medical evidence and afforded him an opportunity to submit additional evidence which would support the claimed causal relationship. However, appellant did not submit such evidence.

CONCLUSION

As appellant has failed to submit sufficient rationalized medical evidence establishing that he sustained an injury caused by the May 10, 2003 employment incident, the Board finds that he has failed to meet his burden of proof in this case.¹¹

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 17, 2003 is affirmed.

Issued: March 17, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁹ *Donald T. Pippin*, 54 ECAB ____ (Docket No. 03-205, issued June 9, 2003).

¹⁰ *Barbara Johnsen (James C. Johnsen)*, 54 ECAB ____ (Docket 03-1738, issued September 30, 2003).

¹¹ Following issuance of the September 17, 2003 decision, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).