United States Department of Labor
Employees' Compensation Appeals Board

BEVERLY A. SANDERS, Appellant	)	
and	)	**Docket No. 06-732**
	)	**Issued: June 8, 2006**
U.S. POSTAL SERVICE, AIRPORT MAIL CENTER, Seattle, WA, Employer	)	

Appearances:
Dean Albrecht, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On February 6, 2006 appellant filed a timely appeal of a December 30, 2005 merit decision of 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.

ISSUE

The issue is whether appellant has established a shoulder or back injury while in the performance of duty on June 25, 2003.

FACTUAL HISTORY

On July 2, 2003 appellant, then a 51-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury to her back and shoulders while in the performance of duty on June 25, 2003. The reverse of the claim indicated that appellant stopped work on June 25, 2003. In a narrative statement, appellant indicated that the injury occurred "when using my badge to reenter the [building] and opening the door." Appellant stated that she felt pain in her shoulders and back.

In a June 25, 2003 report, Dr. Ceferino Fernandez, a family practitioner, reported that appellant complained of back and shoulder pain. Appellant was advised to rest until she received treatment from her orthopedic surgeon. A duty status report (Form CA-17) from an emergency medicine physician dated June 25, 2003 diagnosed myofascial strain and provided work restrictions. No history of injury was provided. There is also a June 25, 2003 emergency medicine form report providing a history that appellant was sitting on a bench when her back tightened up; the diagnosis was acute myofascial strain.

Appellant was treated on July 11, 2003 by Dr. Karl Singer, an orthopedic surgeon. A treatment note dated July 11, 2003 stated that appellant reported increased shoulder pain on June 25, 2003 and "the reason given was she was leaning forward to put the key card in the slot and in the process had increased pain." Dr. Singer provided results on examination and diagnosed right and left shoulder strain, chronic myofascial pain syndrome, and mild to moderate depression.

By decision dated August 19, 2003, the Office denied appellant's claim for compensation. The Office found that the medical evidence was insufficient to meet appellant's burden of proof.

Appellant requested a hearing before an Office hearing representative, which was held on May 19, 2004. In a report dated July 6, 2004, Dr. Fernandez stated that appellant was being treated for work injuries sustained on December 10, 2002.[1] Dr. Fernandez stated that "it was more probable that [appellant's] neck and shoulder injuries are related to the original diagnosis."

In a decision dated August 5, 2004, the hearing representative affirmed the August 19, 2003 decision. The hearing representative found that the medical evidence was not sufficient to establish an injury causally related to the June 25, 2003 employment incident.

Appellant requested reconsideration and submitted a September 1, 2004 report from Dr. Singer who noted that appellant had an injury in December 2002. Dr. Singer discussed magnetic resonance imaging (MRI) results, noting degenerative lumbar changes and tendinosis of the supraspinatus of the shoulders. He stated, "the shoulder pain was increased in June 2003 when [appellant] bent over to use a key card. Symptoms have flared-up subsequent to that event for several weeks." Dr. Singer concluded that appellant could work at a job that did not require repetitive shoulder activity.

By decision dated October 18, 2004, the Office reviewed the case on its merits and denied modification. Appellant again requested reconsideration and submitted additional medical evidence. In a report dated December 5, 2004, Dr. David Judish provided a history of an injury on December 10, 2002 and results on examination. In a report dated February 14, 2005, Dr. William Morris, a neurosurgeon, also provided a history of a December 2002 injury with results on examination. Appellant also submitted a report dated April 13, 2005 from a psychologist, Dr. Frederick Silver, indicating that appellant was an appropriate candidate for pain management.

[1] The record indicates that appellant has a prior claim for injuries on December 10, 2002.

In a decision dated December 30, 2005, the Office reviewed the case on its merits and denied modification.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of 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.[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

Congress, in providing a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[4] The phrase while in the performance of duty has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers compensation law of arising out of and in the course of employment.[5]

ANALYSIS

In the present case, appellant filed a claim for an injury to her shoulders and back on June 25, 2003. Although appellant has a prior claim for injury on December 10, 2002, she is alleging a new employment incident and it is properly developed as a new claim.[6] The Office

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990). 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. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury. *See John J. Carlone*, 41 ECAB 354, 356-57 (1989); *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[4] *Mary Kokich*, 52 ECAB 239, 240 (2001).

[5] *Kathryn A. Tuel-Gillem*, 52 ECAB 451, 452-53 (2001). In addressing this issue, the Board has stated that to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto. *See id.*

[6] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) (May 1997). The Board notes the record contains evidence regarding a diagnosis of depression; any claim for an emotional condition as a consequence of the prior injury or to other alleged employment factors is not before the Board.

has accepted that there was an employment incident as alleged on June 25, 2003, which appellant described as bending over to insert a key card and opening a door. Appellant did seek medical treatment on June 25, 2003 for complaints on shoulder and back pain, but the medical evidence must contain a reasoned medical opinion, based on an accurate background and history, on causal relationship between a diagnosed condition and the employment incident.

The evidence of record does not contain probative medical evidence on the issue presented. The initial medical evidence on June 25, 2003, from the emergency room and from Dr. Fernandez, failed to provide an accurate history of the employment incident or an opinion on causal relationship. In his July 11, 2003 note, Dr. Singer provided a brief reference to appellant leaning over to put a key in a slot, without providing additional detail. He did not provide a specific diagnosis or an opinion on causal relationship between a diagnosed condition and the employment incident. In his September 1, 2004 report, Dr. Singer again did not provide a complete history or a reasoned medical opinion on causal relationship. He referred to an increase in shoulder pain without providing a diagnosis and an explanation of how the employment incident caused an injury.

It is appellant's burden of proof to submit the evidence necessary to establish her claim. In the absence of probative medical evidence, the Board finds that appellant did not meet her burden of proof in this case.

CONCLUSION

Appellant did not submit probative medical evidence establishing an injury in the performance of duty on June 25, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 30, 2005 is affirmed.

Issued: June 8, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board