

**United States Department of Labor
Employees' Compensation Appeals Board**

M.M., Appellant

and

**DEPARTMENT OF THE NAVY, NORFOLK
NAVAL SHIPYARD, Portsmouth, VA, Employer**

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**Docket No. 06-1864
Issued: March 1, 2007**

Appearances:

Jeffrey P. Zeelander, Esq., 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

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 9, 2006 appellant filed a timely appeal of September 12, 2005 and July 18, 2006 decisions of the Office of Workers' Compensation Programs, denying her claim for an injury on March 31, 2005. 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 sustained an injury on March 31, 2005 causally related to factors of her federal employment.

FACTUAL HISTORY

On April 5, 2005 appellant, then a 38-year-old painting worker, filed a traumatic injury claim alleging that on March 31, 2005 at 2:30 p.m. she injured her lower back when she slipped off a ladder while cleaning the inside of a submarine missile tube. The employing establishment controverted appellant's claim, stating that the factual and medical evidence did not establish that she sustained an injury at work on March 31, 2005.

On June 20, 2005 appellant stated that when she fell down the ladder she struck her buttocks, back, head and neck and became incontinent. She indicated that she lost consciousness briefly and experienced pain in her spine, back, neck and bladder and tingling and numbness in her legs. Appellant attempted to climb up the ladder but stumbled and called out for help. As she neared the top of the tube, someone with a hard hat pulled her out. Appellant alleged that the tank topper for that day (the individual assigned to assist workers in the missile tubes), a David Hartman, witnessed the coworker pulling her out of the tube. She delayed getting medical attention because she had a fear of hospitals. On April 13, 2006 in a statement which appears to be a portion of an Equal Employment Opportunity (EEO) complaint regarding termination of her employment,¹ appellant stated that on March 31, 2005 she fell backwards from the ladder while in the missile tube. C. Williams assisted her out of the tube and indicated that she seemed disoriented. Appellant's supervisor, Mr. Sheely, allowed her three days of sick leave. On April 4, 2005 she spoke to William Royster, a supervisor, who told her to sit down for awhile because she did not look well. She left work at 3:30 p.m. with his permission. Appellant went to the employing establishment dispensary on April 5, 2005 and was examined by her family physician on April 6, 2005.

Mr. Sheely stated that on March 31, 2005 he assigned appellant to clean a missile tube with Mr. Hartman assisting topside. Appellant had completed 80 percent of her assignment by the end of her shift. She did not mention an injury or problems to Mr. Sheely or Mr. Hartman. On April 1, 2005 appellant was working in the missile tube for the second day of her detail when she requested sick leave at 9:15 a.m. She told him that her nose was running, her eyes were watering and she was anemic. On April 5, 2005 appellant left a message stating that she was in the dispensary for a back injury sustained the prior week.

Mr. Hartman stated that on March 29, 2005 appellant was assisted out of her missile tube by Mr. Williams. Appellant acted as if she was light-headed from the fumes and was laughing. Although Mr. Williams helped her to climb out of the tube, Mr. Hartman thought she would have been able to exit without assistance and she did not ask Mr. Williams for help. Mr. Hartman stated that on March 31, 2005 he worked with appellant until 2:30 p.m. He was not aware of the fall which she alleged occurred at 2:30 p.m. Mr. Hartman indicated that workers were required to exit the missile tubes if he had to leave the area. Therefore, appellant could not have been inside the tube during her work shift when he was not present. Mr. Hartman assisted her throughout the day on March 31, 2005 but she never mentioned an injury.

Mr. Royster stated that when appellant reported for work on April 4, 2005 she did not mention an injury. After lunch, appellant could not be located and a preaction investigation was initiated because of her failure to report for the evening muster. On April 5, 2005 she reported for work and at 8:15 a.m. he informed her of the investigation for her failure to report for muster the previous day.

On April 5, 2005 at 9:30 a.m., Dr. A. Palencar, an employing establishment physician, obtained a history that on March 31, 2005 appellant had slipped on a ladder inside a missile tube

¹ In her EEO complaint, appellant alleged discrimination by the employing establishment because of a December 2003 claim for inhalation of toxic fumes, her March 31, 2005 claim and a complaint to Occupational Safety and Health Administration.

and fell eight feet, striking her back. She felt dizzy and was lifted out of the tube by a coworker. Appellant indicated that she had pain in her back, neck, left shoulder and arms and her speech was slurred. She stated that she had not eaten the past four days and “just laid there.” Dr. Palencar indicated that she had cervical, thoracic and lumbar muscle spasms. Further evaluation was needed to rule out bone or disc pathology or a neurologic abnormality. He noted that she was a “poor historian” regarding the facts of the incident.

On April 8 and 14, 2005 Dr. Florence A. Paragas, an attending family practitioner, diagnosed a back contusion with neck pain. She indicated that the injury was caused by a fall from a ladder on March 31, 2005. Dr. Paragas found appellant totally disabled through April 29, 2005 and referred her to a neurologist.

On April 13, 21 and May 5, 2005 Dr. Amrutlal J. Barot, an attending Board-certified neurologist, stated that appellant fell eight feet from a ladder on March 31, 2005. She struck her back and head and became incontinent. Appellant experienced subsequent incidents of incontinence as well as fatigue, upper extremity weakness, flashing lights, slurring of speech and headaches with nausea, vomiting, photophobia and sonophobia. He provided findings on physical examination and indicated that there was a significant psychogenic component to her symptoms. However, a magnetic resonance imaging (MRI) scan would be performed to rule out brain or spinal cord injury.

By decision dated September 12, 2005, the Office denied appellant’s claim on the grounds that the evidence did not establish that she sustained an injury on March 31, 2005 causally related to factors of her employment.

Appellant requested reconsideration and submitted additional evidence. On November 11, 2005 Dr. Mary A. Bowles, an attending Board-certified neurologist, stated that appellant fell from an eight-foot ladder on March 31, 2005, striking her head and experiencing a brief loss of consciousness. She developed severe pain all over her body, headaches, paresthesias in all four extremities, generalized weakness and incontinence. Dr. Bowles noted that MRI scans of the brain and spine performed in April 2003 were essentially normal. A repeat brain MRI scan in June 2005 was normal. She provided findings on physical examination and the results of a neurologic examination. Thorough evaluation revealed only a small lesion in the dorsal cervical spinal cord at the C2 disc level. Dr. Bowles recommended further objective testing. On December 9, 2005 Dr. Bowles stated that appellant was being evaluated for a possible demyelinating disease and referred her to a specialist.

By decision dated July 18, 2006, the Office denied modification of the September 12, 2005 decision.

LEGAL PRECEDENT

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. There are two components involved in establishing the fact of injury. 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.² Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³ An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's 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 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.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that the claimant's condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁵

ANALYSIS

Appellant alleged that on March 31, 2005 she sustained a back injury when she slipped off a ladder while inside a submarine missile tube. She slipped and fell approximately six to eight feet, striking her back and head against the tube. Appellant indicated that she was unconscious briefly. She experienced pain in her spine, back, neck and bladder and tingling and numbness in her legs. Appellant attempted to climb up the ladder but stumbled and called out for help. As she neared the top of the tube someone with a hard hat pulled her out.

The statements of her supervisors and coworkers do not support appellant's description of the alleged incident on March 31, 2005. Mr. Sheely stated that on March 31, 2005 he assigned appellant to clean a missile tube with Mr. Hartman assisting topside. Appellant had completed 80 percent of her assignment by the end of her shift. She did not mention an injury to Mr. Sheely or Mr. Hartman on that date. Mr. Hartman stated that on March 31, 2005 he was assigned to assist workers going into the missile tubes and was not aware of appellant's alleged fall. He indicated that workers were required to exit the missile tubes if he had to leave the area. Therefore, appellant would not have been inside the tube during her work shift at any time when he was not present. He assisted appellant throughout the day on March 31, 2005 but she never

² *John J. Carlone*, 41 ECAB 354 (1989).

³ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 3.

⁵ *Walter D. Morehead*, 31 ECAB 188 (1979).

mentioned an injury. Mr. Royster stated that when appellant reported for work on April 4, 2005 she did not mention an injury.

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 her subsequent course of action. The employee has not met her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁶ 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 serious doubt on a claimant's statements.⁷ In this case, appellant did not report the alleged March 31, 2005 injury until April 5, 2005. She did not tell anyone at work about the incident on the day it allegedly occurred, March 31, 2005. She returned to work the next day without any apparent problems and again she did not mention the March 31, 2005 incident. However, she requested sick leave for a runny nose, watery eyes and anemia. Appellant did not seek medical treatment until April 5, 2005, after a discussion concerning possible disciplinary action because she left work without permission on the afternoon of April 4, 2005. The Board finds that the inconsistencies in the factual evidence cast substantial doubt as to whether the March 31, 2005 incident occurred at the time, place and in the manner alleged.

The Board also finds that the medical evidence does not establish that appellant sustained an injury on March 31, 2005 causally related to factors of her employment.

Dr. Palencar stated that on March 31, 2005 appellant had slipped on a ladder inside a missile tube and fell eight feet, striking her back. Appellant indicated that she had pain in her back, neck, left shoulder and arms and her speech was slurred. He did not provide a specific diagnosis and recommended further testing. As Dr. Palencar did not provide a diagnosis for the alleged injury on March 31, 2005 or any explanation as to how appellant's symptoms were causally related to the alleged work incident, his report is not sufficient to establish that appellant sustained a work-related injury on March 31, 2005.

Dr. Paragas diagnosed a back contusion with neck pain and indicated that the injury was caused by a fall from a ladder on March 31, 2005. However, she provided insufficient medical rationale explaining how appellant's condition was causally related to the alleged March 31, 2005 incident. Therefore, the report of Dr. Paragas is not sufficient to discharge appellant's burden of proof to establish a work-related injury on March 31, 2005.

Dr. Barot stated that appellant fell eight feet from a ladder on March 31, 2005, struck her back and head and became incontinent. Appellant experienced subsequent incontinence as well as fatigue, weakness of her upper extremities, flashing lights in front of her, slurring of speech and headaches with nausea, vomiting, photophobia and sonophobia. He provided findings on physical examination and indicated that there was a significant psychogenic component to appellant's symptoms but an MRI scan would be performed to rule out brain or spinal cord

⁶ Linda S. Christian, 46 ECAB 598 (1995).

⁷ *Id.*

injury. Dr. Barot did not provide a specific diagnosis or explain how appellant's symptoms were causally related to the alleged March 31, 2005 incident at work. Additionally, he indicated a possible psychological cause for appellant's symptoms. For these reasons, his report is not sufficient to establish that appellant sustained a work-related injury on March 31, 2005.

Dr. Bowles stated that appellant fell from an eight-foot ladder on March 31, 2005, striking her head and experiencing a brief loss of consciousness. She developed severe pain in her body, headaches, paresthesias in all four extremities, generalized weakness and incontinence. Dr. Bowles noted that MRI scans of the brain and spine performed were essentially normal. Thorough evaluation revealed only a small lesion in the dorsal cervical spinal cord at the C2 disc level and she recommended further objective testing. Dr. Bowles did not provide a specific diagnosis or explain how appellant's symptoms were causally related to the alleged March 31, 2005 incident. Therefore, her reports are not sufficient to establish that appellant sustained an injury at work on March 31, 2005.

CONCLUSION

The Board finds that appellant failed to submit sufficient factual and medical evidence to establish that she sustained an injury on March 31, 2005 causally related to factors of her employment. Therefore, the Office properly denied her claim.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 18, 2006 and September 12, 2005 are affirmed.

Issued: March 1, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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