

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

L.W., Appellant

and

**DEPARTMENT OF THE AIR FORCE, AIR
LOGISTICS CENTER, ROBINS AIR FORCE
BASE, GA, Employer**

)
)
)
)
)
)
)
)
)
)

**Docket No. 08-1253
Issued: January 21, 2009**

Appearances:

Joseph F. Henderson, Esq., for the appellant

Matthew Bernt, Esq., for the Director

Oral Argument December 3, 2008

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge

COLLEEN DUFFY KIKO, Judge

MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 24, 2008 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated December 11, 2007 and February 7, 2008 that denied her claim. 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 met her burden of proof to establish that she sustained a neck, shoulder or upper back injury on August 30, 2007 causally related to factors of her federal employment.

FACTUAL HISTORY

On September 17, 2007 appellant, then a 64-year-old inventory management specialist, filed a Form CA-1, traumatic injury claim, alleging that she injured her lower neck, shoulders

and upper back on August 30, 2007 picking up heavy boxes at work. She stopped work on September 5, 2007. The employing establishment controverted the claim.

In a report dated September 24, 2007, Dr. Mellayne Myers, Board-certified in family medicine, diagnosed neck, shoulder and upper back pain and advised that appellant could return to work with a restriction of no elbow or above shoulder work and a maximum weight restriction of 20 pounds. Magnetic resonance imaging (MRI) scans were performed on October 4, 2007. Cervical spine MRI scan demonstrated a small to moderate-sized central disc protrusion at C5-6 and a mild broad-based disc bulge or protrusion without significant stenosis at C6-7. Thoracic spine MRI scan demonstrated minimal thoracic degenerative disc disease with no spinal stenosis. Right shoulder MRI scan demonstrated very mild supraspinatus tendinopathy, no rotator cuff tear, mild acromioclavicular joint hypertrophy, and a probable subchondral cyst in the humeral head. By report dated October 12, 2007, Dr. Myers noted her review of the MRI scans and that appellant had reported neck, upper back and shoulder discomfort since August 30, 2007. She advised that the neck and shoulder pain were related to the MRI scan changes. On October 19, 2007, Dr. Sally A. West, a Board-certified internist, advised that appellant was unable to work due to persistent, severe neck pain.

By letter dated November 7, 2007, the Office advised appellant of the evidence needed to support her claim. Appellant reported that on August 30, 2007 when working to prepare for a scheduled inspection, she lifted a box down to the floor and felt a “terrific shock injury” to her neck, causing excruciating pain to her neck, shoulders and upper back. She reported the injury to the acting supervisor, left work, drove home, took pain medication and went to bed. Appellant stated that the following day, after receiving help with activities of daily living due to the pain, she drove herself to occupational medicine at the employing establishment, but they were closed due to the upcoming Labor Day holiday. She then went to the emergency room, and was sent home with pain medication. Appellant submitted emergency room discharge instructions that included a final diagnosis of acute back/shoulder muscular spasms and pain. In a September 24, 2007 report, Dr. Myers noted the history of injury, provided physical findings, and recommended further studies. By report dated November 29, 2007, he advised that appellant’s symptoms and physical findings had been consistent with her reported mechanism of injury and, therefore, within a reasonable degree of medical certainty, her current medical condition was related to the reported August 30, 2007 work injury.

In a December 11, 2007 decision, the Office denied the claim. It found the August 30, 2007 incident established but that the medical evidence was insufficient to establish that appellant’s claimed medical condition was caused by the accepted incident.

On January 7, 2008 appellant requested reconsideration. In a December 14, 2007 report, Dr. West advised that she had not had the opportunity to evaluate appellant in person for her neck injury but that in her medical opinion it was clear that appellant’s neck pain was caused by the heavy lifting incident at work. In a December 28, 2007 report, she advised that appellant was under her care for severe neck pain caused by heavy lifting at work and was unable to return to work.

By decision dated February 7, 2008, the Office denied modification of the December 11, 2007 decision, finding the medical evidence insufficient to establish appellant’s claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.²

Section 10.5(ee) of Office regulations defines a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.³ To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁴

Causal relationship is a medical issue, and the medical evidence opinion required to establish a causal relationship is rationalized medical evidence.⁵ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁶ 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.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the

¹ 5 U.S.C. §§ 8101-8193.

² *Gary J. Watling*, 52 ECAB 278 (2001).

³ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁴ *Gary J. Watling*, *supra* note 2.

⁵ *M.W.*, 57 ECAB 710 (2006).

⁶ *D.D.*, 57 ECAB 734 (2006).

⁷ *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

ANALYSIS

The Office accepted that the August 30, 2007 incident occurred in the performance of duty. The Board, finds, however, that the medical evidence of record is insufficient to establish that appellant sustained an injury or medical condition caused by this incident. The emergency room note dated August 31, 2007 merely provided a diagnosis of acute back/shoulder muscular spasms and pain but did not address the cause of the diagnosed condition. Similarly, the MRI scan studies merely provided diagnoses. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ In a November 29, 2007 report, Dr. Myers advised that appellant's symptoms and physical findings were consistent with her reported mechanism of injury and, thus, her current medical condition was related to the reported August 30, 2007 work injury. In a December 28, 2007 report, Dr. West advised that appellant was under her care for severe neck pain caused by heavy lifting at work and was unable to return to work. The Board finds that these reports, too, are insufficient to establish causal relationship as neither physician provided medical rationale explaining the mechanics of how appellant's diagnosed conditions were caused or aggravated by the August 30, 2007 incident. The physicians did not provide a review of appellant's full medical history or explain the basis for their stated conclusion on causal relation. To meet his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury or medical condition was caused by the employment incident.¹⁰ The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.¹¹

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment injury on August 30, 2007.

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁰ *Gary J. Watling*, *supra* note 2.

¹¹ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 7, 2008 and December 11, 2007 be affirmed.

Issued: January 21, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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