

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

B.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Port St. Lucie, FL, Employer**

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**Docket No. 09-1041
Issued: November 2, 2009**

Appearances:

*Alan J. Shapiro, 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 March 12, 2009 appellant filed a timely appeal from a January 27, 2009 decision of the Office of Workers' Compensation Programs denying her traumatic injury 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 sustained a neck and right arm injury on July 7, 2000 in the performance of duty.

FACTUAL HISTORY

This is the fourth appeal in this case.¹ On July 7, 2008 the Board affirmed a November 6, 2007 Office decision denying appellant's claim for an injury on July 7, 2000. By decisions dated May 16, 2005 and August 14, 2007, the Board affirmed February 13, 2003 and May 2, 2006 decisions denying appellant's claim. The prior decisions of the Board are hereby incorporated by reference.

On December 13, 2008 appellant requested reconsideration and submitted additional medical evidence. In an August 6, 2008 report, Dr. Bruce M. Fishbane, a Board-certified orthopedic surgeon, performed a fitness-for-duty evaluation. He reviewed the medical evidence but did not specify which reports he read. Appellant presented with persistent moderate neck pain and recurring occipital headaches. She described the incident involving her delivery vehicle on July 7, 2000. Dr. Fishbane provided findings on physical examination. Examination of the cervical spine revealed an absent right triceps reflex. Sensation was diminished in appellant's right upper arm and the volar and dorsal aspects of the right middle, ring and little fingers and hypothenar eminence. Strength testing revealed weakness in the right upper extremity. There was trapezius and levator scapula muscle spasm without scapula tenderness. Neck range of motion revealed limited extension and right lateral bending. The remaining physical findings were normal. Dr. Fishbane noted that a July 11, 2000 cervical spine magnetic resonance imaging (MRI) scan revealed degenerative changes at C4-5 through C6-7. He diagnosed degenerative cervical disc syndrome with right upper extremity radiculopathy. Dr. Fishbane opined that appellant had asymptomatic cervical spondylosis which became symptomatic on July 7, 2000 when she pulled the hand brake on her delivery vehicle.

By decision dated January 27, 2009, the Office upheld the denial of appellant's claim on the grounds that the evidence did not establish that she sustained an employment-related traumatic injury on July 7, 2000.

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 he or she actually experienced the employment incident at the time, place and in the manner alleged.² Second, the employee must submit

¹ See Docket No. 08-403 (issued July 7, 2008); Docket No. 07-1020 (issued August 14, 2007); Docket No. 04-130 (issued May 16, 2005). On July 27, 2000 appellant, then a 38-year-old letter carrier, filed a claim for a traumatic injury alleging that on July 7, 2000 she experienced neck and right arm pain when she pulled the hand brake of her delivery truck. By decisions dated October 3 and November 15, 2000, August 23, 2001, March 5 and September 30, 2002, February 13, 2003, May 2, 2006 and September 13 and November 6, 2007, the Office denied her claim on the grounds that the evidence did not establish causal relationship between her neck and right arm injury and the July 7, 2000 work incident.

² *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

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 his or her disability or condition relates to the employment incident.

To establish a causal relationship between an employee's condition and any disability claimed and the employment event or incident, he or 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 employee's diagnosed condition and the compensable employment factors. 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 claimant.⁴

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

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a work-related injury to her neck and right arm on July 7, 2000. Causal relationship must be established by rationalized medical opinion evidence based on a complete and accurate factual and medical background. Appellant has failed to submit such evidence.

On August 6, 2008 Dr. Fishbane indicated that he reviewed the medical evidence but did not specify which reports he read. Appellant provided a description of the incident involving her delivery vehicle on July 7, 2000. She presented on August 6, 2008 with persistent neck pain and recurring occipital headaches. Dr. Fishbane provided findings on physical examination, which included an absent right triceps reflex and diminished sensation and strength in the right upper extremity. There was trapezius and levator scapula muscle spasm without scapula tenderness. Neck range of motion revealed limited extension and right lateral bending. The remaining physical findings were normal. Dr. Fishbane noted that a July 11, 2000 MRI scan revealed degenerative changes at C4-5 through C6-7. He diagnosed degenerative cervical disc syndrome with right upper extremity radiculopathy. Dr. Fishbane opined that appellant had asymptomatic cervical spondylosis which became symptomatic on July 7, 2000, when she pulled the hand brake on her delivery vehicle. There are two deficiencies in his report. Dr. Fishbane did not specify the medical evidence that he reviewed. Therefore, it cannot be determined whether his

³ *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁴ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

report is based on a complete and accurate factual and medical background. Additionally, Dr. Fishbane's opinion regarding causal relationship is not consistent with the contemporaneous medical evidence. Medical reports closer in time to the claimed injury date are more probative than subsequent medical reports. The Board has held that contemporaneous evidence is entitled to greater probative value than later evidence.⁶ None of the contemporaneous medical reports in 2000 contain physical findings on examination and a rationalized medical opinion establishing that appellant's right upper extremity pain and numbness on July 7, 2000 was causally related to using a tight hand brake on that date, as she alleged. The July 7, 2000 emergency room report indicated that appellant was seen for right upper extremity and shoulder pain and numbness of two days' duration. The medical history indicated that she was a letter carrier and her job involved carrying heavy boxes and unbuckling seat belts. The emergency room physician provided findings on physical examination and diagnosed degenerative joint disease of the cervical spine and cervical radiculopathy. Appellant was prescribed pain medication and released to return to work on July 10, 2000. There was no rationalized opinion in the emergency room report as to the cause of her cervical spine and right arm condition. On July 10, 2000 Dr. Hal Tobias, Board-certified in neurology, indicated that appellant went to the emergency room on July 7, 2000 after driving a loaner work vehicle with a tight hand brake. He diagnosed cervical radiculopathy but did not provide a rationalized opinion explaining how appellant's condition was causally related to her employment. A July 11, 2000 MRI scan revealed multilevel degenerative disc disease and moderately advanced degenerative cervical spondylosis. The description of the degenerative cervical spine problems as moderately advanced is not consistent with the cause being an incident at work only a few days prior, on July 7, 2000. Dr. Fishbane did not explain how he could attribute appellant's condition in 2008 to the July 7, 2000 incident in light of the fact that the contemporaneous medical evidence did not establish such causal relationship. Due to these deficiencies, his opinion regarding causal relationship is of limited probative value. It is not sufficient to establish that appellant sustained a cervical spine and right arm injury on July 7, 2000 causally related to her employment.

The Board finds that the weight of the medical evidence fails to establish that appellant sustained an employment-related injury on July 7, 2000.

On appeal, appellant asserts that the Office's January 27, 2009 decision is contrary to the facts and the law. However, she does not provide any specific argument or evidence regarding her assertion. Therefore, this argument is without merit.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury on July 7, 2000 in the performance of duty.

⁶ See *Conard Hightower*, 54 ECAB 796 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 27, 2009 is affirmed.

Issued: November 2, 2009
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