

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

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P.D., Appellant)	
)	
and)	Docket No. 09-432
)	Issued: September 2, 2009
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, LYNCHBURG)	
REGIONAL AIRPORT, Lynchburg, VA,)	
Employer)	
)	

Appearances:
 Alan J. Shapiro, Esq., for the appellant
 Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
 DAVID S. GERSON, Judge
 MICHAEL E. GROOM, Alternate Judge
 JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 1, 2008 appellant, through her representative, filed a timely appeal from a May 28, 2008 merit decision of the Office of Workers' Compensation Programs and an October 17, 2008 decision of an Office hearing representative denying her claim for fact of injury. Pursuant to 5 U.S.C. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty on March 6, 2008, as alleged.

FACTUAL HISTORY

On April 7, 2008 appellant, then a 39-year-old transportation security officer, filed a traumatic injury claim alleging that on March 6, 2008 she experienced intense pain in her shoulders and back while lifting bags at a checkpoint. She claimed that she had difficulty operating the x-ray machine. The employing establishment controverted the claim and stated that reports indicated that appellant pulled a muscle from coughing due to bronchitis.

Appellant submitted several medical reports dated September 10 through 25, 2007 addressing a left shoulder injury.

By letter dated April 23, 2008, the Office notified appellant of the deficiencies in her claim and requested that she provide additional information.

In a March 11, 2008 medical report, Dr. Susan D. Hundley, Board-certified in family medicine, noted appellant's complaints of right arm pain with numbness and tingling in her right hand. Physical examination revealed limited range of motion with abduction of 35 to 50 degrees and pain with internal and external rotation. Pain was also present in the trapezius and rhomboids up the side of the head. Dr. Hundley opined that compression and rotation of the cervical spine were suggestive of nerve root compression and that symptoms radiating down into the right index finger were suggestive of C5-6 radiculopathy. She diagnosed cervical spine radiculopathy.

A March 19, 2008 magnetic resonance imaging (MRI) scan of appellant's cervical spine revealed degenerative disc disease primarily at C5-6 and C6-7 and slight narrowing of the canal space with slight effacement of the cord at C6-7 secondary to a disc or osteophyte complex. Lesser degenerative changes were also seen at C5-6. Dr. Kevin O. Hicks, a Board-certified diagnostic radiologist, noted that clinical indications were a lifting injury, posterior neck pain and bilateral shoulder pains.

On March 25, 2008 Dr. Hundley reviewed appellant's MRI scan and diagnosed cervical spine radiculopathy due to pathology at C5-6 and C6-7. She stated that it was unclear whether the injury was actually a workers' compensation injury, although appellant believed that it should be covered as such.

In an April 17, 2008 report, Dr. Hundley stated that a cervical spine epidural injection improved appellant's symptoms. She advised appellant to return for another epidural, physical therapy and a follow-up evaluation with a neurosurgeon when workers' compensation was available. In an April 17, 2008 health care provider certification, Dr. Hundley diagnosed right cervical spine radiculopathy with pathology at C5-6 and C6-7. She indicated that the condition commenced on February 11, 2006 with symptoms of parasthesias and numbness and progressively worsened for approximately 30 months. Dr. Hundley indicated that appellant was unable to work pending a neurological evaluation.

By decision dated May 28, 2008, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that she sustained an injury causally related to her employment activities on March 6, 2008.

On June 23, 2008 appellant requested an oral hearing before an Office hearing representative. On August 18, 2008 she requested that the oral hearing be changed to a review of the written record.

In a May 14, 2008 report, Dr. Hundley stated that appellant experienced paresthesias, diminished sensation in the right hand and diminished abduction with minimal improvement after two steroid epidurals. She also noted symptoms including lower extremity paresthesias, left foot numbness, hip pain and bilateral thoracic and lumbar pain suggestive of radicular-type symptoms.

On June 3, 2008 Dr. Richard A. Bendall, Jr., Board-certified in family medicine, stated that appellant presented with a workers' compensation claim related to cervical and lumbar pain. He noted the history that she was working as a checker at the airport and lifted heavy bags resulting in an injury to her back and upper neck in February 2006. Appellant sustained a gradual worsening of right shoulder pain and hand numbness and her current symptoms included low back pain, right shoulder and neck pain and numbness in both feet and arms. She also experienced spasms bilaterally in her legs and feet. Dr. Bendall diagnosed lower spine and cervical osteoarthritis with diagnostic showing early nerve compression in both areas. He opined that appellant injured her upper and lower back in February 2006 at the employing establishment. Dr. Bendall stated that it was obvious that lifting heavy boxes and baggage at the airport could have caused or aggravated her neck injury. He repeated that it was possible that appellant's injury occurred while she was working at the employing establishment.

By decision dated October 17, 2008, the Office hearing representative affirmed the May 28, 2008 decision finding that appellant did not submit sufficient medical evidence to establish the causal relationship between her back and neck conditions and the March 6, 2008 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,² including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³ As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁴ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality,

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *G.T.*, *supra* note 3; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on 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 employee.⁶

ANALYSIS

The issue is whether appellant established that she sustained an injury on March 6, 2008 while lifting bags at a checkpoint. The Board finds she has not met her burden of proof.

Appellant submitted medical reports from Dr. Hundley dated March 11 through May 14, 2008. In the March 25, 2008 report, she diagnosed cervical spine radiculopathy and stated that it was unclear whether this condition was actually a workers' compensation injury. Dr. Hundley merely noted that appellant believed that her condition should be covered as an employment injury. On April 17, 2008 she indicated that appellant's condition commenced on February 11, 2006 and continued for approximately 30 months. Dr. Hundley did not otherwise remark on the cause of appellant's cervical or back injury or whether the condition was work related.

The Board finds that Dr. Hundley's reports are insufficient to establish appellant's claim of a March 6, 2008 employment injury. She did not provide a rationalized medical opinion explaining the cause of appellant's injury or its relationship to the March 6, 2008 employment event.⁷ Rather, Dr. Hundley reported that appellant's injury commenced in February 2006, two years prior to the March 6, 2008 work incident.⁸ In this regard she did not address whether appellant had preexisting degenerative disease or whether the accepted incident at work had aggravated her conditions. Dr. Hundley questioned whether appellant's condition was related to her employment and stated that she was unsure whether the condition should be covered as a workers' compensation injury. The fact that appellant believed that her injury should be covered by workers' compensation is not sufficient to establish caused relationship.⁹

⁵ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁶ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *See T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008).

⁸ *See C.B.*, 60 ECAB ___ (Docket No. 08-1583, issued December 9, 2008).

⁹ *See Robert Broome*, 55 ECAB 339 (2004).

The diagnostic test reports dated March 19 and May 23, 2008 are also insufficient to establish causation. Although Dr. Hicks noted in the March 19, 2008 report that clinical indications of appellant's condition was a lifting injury, he did not otherwise describe the lifting incident or how it caused or aggravated her condition. Therefore, these reports are of diminished probative value.¹⁰

On June 3, 2008 Dr. Bendall diagnosed lower spine and cervical osteoarthritis with early nerve compression. He provided a history that appellant injured her neck and back in February 2006, while working as a checker at the airport due to lifting heavy bags. Dr. Bendall opined that obviously her lifting of heavy boxes and baggage at the airport could have caused or aggravated her neck injury. The Board finds these reports are insufficient to establish appellant's claim. The issue on appeal is whether appellant sustained an injury on March 6, 2008 while lifting bags at work.¹¹ Dr. Bendall only addressed a February 2006 injury and did not provide any opinion regarding the March 6, 2008 incident. Further, his opinion is speculative and lacks medical rationale on the issue of causation, which renders his opinion of diminished probative value.¹² Similarly, the medical reports dated September 10 through 25, 2007 predate the claimed work event and are not relevant to whether the March 6, 2008 incident caused an injury.¹³

The Board finds that appellant did not submit sufficient medical evidence to support her claim that she sustained an injury on March 6, 2008.

CONCLUSION

The Board finds that appellant did not establish that she sustained an injury in the performance of duty on March 6, 2008 as alleged.

¹⁰ See *Conrad Hightower*, 54 ECAB 796 (2003).

¹¹ The Board notes that the record contains a traumatic injury claim, Form CA-1, for an alleged February 11, 2006 employment injury about the left shoulder and back resulting from appellant performing her employment duties in her capacity as a transportation security officer. However, the Board's jurisdiction is limited to the deliberation of appeals from final decisions of the Office. The only issue addressed by the Office in the May 28 and October 17, 2008 decisions is whether the accepted March 6, 2008 work event resulted in an injury. Thus, the Board does not have jurisdiction over the issue of whether appellant sustained a work injury on February 11, 2006. See 20 C.F.R. § 501.2(c). See also *J.P.*, 58 ECAB ___ (Docket No. 06-1274, issued January 29, 2007).

¹² See *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009); *D.D.*, 57 ECAB 734 (2006).

¹³ See *Robert Broome*, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the October 17 and May 28, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 2, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board