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HARRIET D. HUEITT, Appellant)	
)	
and)	Docket No. 04-135
)	Issued: February 17, 2004
U.S. POSTAL SERVICE, POST OFFICE,)	
Philadelphia, PA, Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

On October 22, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated July 16, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue in this case is whether appellant sustained an injury in the performance of duty on May 24, 2003 as alleged.

On May 27, 2003 appellant, then a 45-year-old mail handler, filed a claim alleging that on May 24, 2003 she sustained pain in her right shoulder, numbness and tingling in her right arm, hand and fingers as a result of pushing and pulling containers of mail. The employing establishment controverted appellant's claim, stating that, on the date of appellant's alleged injury, she requested permission to change her job to operation of the industrial tractor or forklift. In an attached narrative, she stated that, on the evening of May 24, 2003, she started to

feel pain in her right shoulder for which she took medication; she was not scheduled to work for the next two days but on May 27, 2003, upon her return to work, her right shoulder pain returned along with numbness in her arm, hand and fingers.¹ Appellant also submitted a May 29, 2003 report from Dr. Kathleen M. Goldstein, her treating osteopath, who placed lifting, pushing and pulling restrictions on appellant's work duties.

By letter dated June 13, 2003, the Office advised appellant that the evidence she had submitted was insufficient to establish that she sustained an injury on May 24, 2003. The Office requested additional information, including a report from her attending physician explaining why the doctor believed that her diagnosed condition was caused by her performance of duty.

In a report dated May 29, 2003 and received by the Office on July 7, 2003, Dr. Goldstein stated that she examined appellant and reported tenderness on palpation of the right trapezius and parascapular muscles and diagnosed shoulder strain, trapezius myositis and parascapular muscle strain. She prescribed physical therapy to begin on June 3, 2003 and released appellant to return to restricted duty. Appellant also submitted reports dated May 24 and 27, 2003 and June 18, 2003 from a physician's assistant.

By decision dated July 16, 2003, the Office found that the May 24, 2003 incident occurred but denied appellant's claim on the grounds that she failed to establish fact of injury. The Office specifically found that the evidence was insufficient to establish that her injury occurred while in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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. 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

In order to determine whether an employee actually sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. There are two components involved in establishing fact of injury which must be considered. 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. In some

¹ On May 27, 2003 appellant accepted the employing establishment's offer of a limited-duty assignment effective that day. The record includes a May 27, 2003 medical report limiting appellant's work activities. The signature is illegible.

² 5 U.S.C. §§ 8101-8193.

³ *Gabe Brooks*, 51 ECAB 184 (1999).

traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁴ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and her subsequent course of action. A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. Although an employee's statement alleging that an injury occurred at a given time and in a given manner, is of great probative value and will stand unless refuted by strong or persuasive evidence, an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.⁵

Second, the employee must submit sufficient evidence, generally in the form of medical evidence, to establish that the employment incident caused the personal injury.⁶ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.⁷

ANALYSIS

In this case, the Office found that the evidence of record was sufficient to establish that the claimed incident occurred on May 24, 2003. Because an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence, the Board finds that appellant was pushing and pulling containers of mail on May 24, 2003, as alleged. The employing establishment does not dispute that appellant worked that night. Consequently, the Board finds that appellant has established that the incident occurred on May 23, 2003 as alleged.⁸

However, the Board finds that appellant has submitted insufficient medical evidence to establish a causal relationship between her diagnosed conditions and the employment incident on May 24, 2003.

To establish causal relationship, appellant must submit a physician's report in which the physician reviews what factors of employment identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and

⁴ *Paul Trotman-Hall*, 45 ECAB 229 (1993).

⁵ *Caroline Thomas*, 51 ECAB 451 (2000).

⁶ *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ The employing establishment also alleged that appellant may have injured herself while moving. However, there is no evidence to support this allegation.

appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition and present medical rationale in support of his opinion.⁹ Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.

In the present case, appellant has not provided sufficient medical evidence that identifies an employment factor that caused or contributed to her condition. The medical evidence consists of two May 29, 2003 reports from Dr. Goldstein, appellant's treating osteopath, who diagnosed right shoulder strain, trapezius myositis and right parascapular muscle strain. In a separate report that day, she released appellant to return to restricted duty. These reports, however, do not contain a history of a May 24, 2003 employment incident, nor do they address the issue of causal relationship between any of the diagnosed conditions and the May 24, 2003 employment incident. Further, Dr. Goldstein did not provide any opinion relating her findings to appellant's federal employment. The Board has long held that medical reports not containing rationale on causal relation are entitled to little probative value.¹⁰ Furthermore, appellant has not provided evidence that a medical condition was caused by the May 24, 2003 incident. Therefore, Dr. Goldstein's reports are insufficient to establish appellant's claim. Additionally, the physician's assistant's reports are of no probative value in establishing causal relationship since a physician's assistant is not a "physician" within the meaning of the Act.¹¹

Despite being advised of the deficiencies in her medical evidence, appellant failed to submit a rationalized medical opinion addressing the issue of causal relationship and, therefore, failed to establish fact of injury. As she has failed to establish fact of injury, she is not entitled to compensation.¹²

⁹ *Gary J. Watling*, 52 ECAB 278 (2001).

¹⁰ *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹¹ *John H. Smith*, 41 ECAB 444 (1990).

¹² The Board notes that appellant submitted additional evidence following the July 16, 2003 Office decision. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that appellant has not established that she sustained a work-related injury on May 24, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 16, 2003 is affirmed.

Issued: February 17, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member