United States Department of Labor
Employees' Compensation Appeals Board

PEG L. HOLDER, Appellant	)	
and	)	**Docket No. 05-1318**
	)	**Issued: October 7, 2005**
DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, Omaha, NE, Employer	)	

Appearances:
Peg L. Holder, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 31, 2005 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated December 21, 2004 and May 11, 2005, finding that she did not sustain an injury while in the performance of duty. 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 has established that she sustained an injury while in the performance of duty.

FACTUAL HISTORY

On July 15, 2004 appellant, then a 46-year-old program analyst, filed a traumatic injury claim alleging that on October 1, 2003 she suffered from internal bladder problems while on assignment in Iraq from September 21, 2003 through April 27, 2004. She stated that she developed bladder infections and overactive bladder problems due to unsanitary and contaminated facilities. Appellant indicated that her problems continued after she returned from

deployment. She noted that she received medical treatment in a military hospital and medical units while deployed.

In support of her claim, appellant submitted a November 29, 2003 medical treatment note of Captain Randall L. Likes, who is Board-certified in emergency medicine, which revealed that she had a two-month history of stress and urge incontinence and that she was treated for a urinary tract infection six weeks ago. A physical examination revealed a negative urine dip and appellant was referred for a urological evaluation. A February 19, 2004 treatment note from a lieutenant whose signature is illegible provided a history that appellant "developed overactive bladder after arriving in country" and a diagnosis of overactive bladder. An unsigned medical treatment note dated November 30, 2003, indicated that appellant had an overactive bladder. Appellant submitted a list of her attending physicians and a July 15, 2004 Form CA-7 claim for leave buy back and a schedule award.

By letter dated September 9, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised her about the type of factual and medical evidence she needed to submit to establish her claim. In response, appellant submitted an August 14, 2004 medical report which was electronically signed by Dr. Kimberly A. Apker, a Board-certified radiologist, who reported a normal renal ultrasound. She also submitted a consent for medical treatment form dated August 13, 2004, unsigned medical treatment notes regarding her urinary problems and a medical bill. In an undated letter, appellant provided a description of how she sustained the alleged injury and her medical treatment. She stated that she continued to experience bladder problems when she returned from Iraq and to receive medical treatment.

Appellant underwent a cystoscopy on October 8, 2004 which was performed by Dr. Jon J. Morton, a Board-certified urologist, due to her diagnosis of urgency and frequency. She submitted a November 24, 2004 unsigned report, which contained the typed name of Dr. Robert C. Bossert, a Board-certified gynecologist. The report found that appellant suffered from metromenorrhagia, anemia and urinary incontinence. In a June 24, 2004 report, Dr. Stephen S. Lim, a Board-certified urologist, provided a history that prior to October 2003, appellant had no problems with infection or leakage. He noted that she was sent to Iraq for seven months and that as soon as she arrived, she noted burning with urination, problems with emptying, frequency occurring every 30 minutes and significant urge with eventual leakage. Appellant also noted leakage when standing in the supine to upright position especially at night after waking up. Dr. Lim provided a history of appellant's medical, family and social background and his findings on physical examination. He diagnosed urinary frequency urgency during the day and stress urinary incontinence. Dr. Lim stated that the latter condition was new since appellant's arrival in Iraq. He noted that he discussed different etiologies of appellant's conditions, as well as, treatment options with her.

By decision dated December 21, 2004, the Office found the evidence of record sufficient to establish that the work incident occurred, but insufficient to establish that appellant sustained a medical condition causally related to the accepted event. Accordingly, the Office denied her claim.

Appellant submitted treatment notes dated November 24, 2004 which contained illegible signatures of nurses and addressed her preoperative urinary problems. She also submitted a patient history form that she completed on June 21, 2004 for a urology evaluation, which was reviewed by a physician whose signature is illegible, a hospital patient information form and physicians' preoperative and postoperative orders that were either unsigned or from physicians whose signatures were illegible. Appellant submitted Dr. Morton's orders which indicated that she suffered from stress incontinence and metromenorrhagia, anesthesia flow sheet reports that contained an illegible signature, a November 26, 2004 pathology report, which contained illegible initials and diagnosed endometrial scrapings that consisted of segments of midescretory endometrium with mild endometritis, an education record for a patient undergoing a hysterectomy and perioperative procedure and discharge instructions dated November 25, 2004 that were signed by a nurse with an illegible signature.

An undated and unsigned note which contained Dr. Morton's typed name found a large capacity bladder with good compliance and no evidence of detrusor instability. The note indicated that appellant leaked with a cough beginning at 200cc and with valsalava beginning at 300cc. Appellant also had a low leak point pressure and mildly elevated perspective volume rendering on initial flow rate but she emptied well following a pressure flow study. Appellant was scheduled for a cystoscopy the following week. In a September 14, 2004 treatment note, Dr. Morton provided a history that appellant went to Iraq about a year and one-half ago and started to notice significant urinary symptoms shortly thereafter. He noted that she was diagnosed as having a "possible" urinary tract infection and an overactive bladder. He further noted her medical treatment and symptoms. Dr. Morton recommended a formal urodynamics study and cystoscopy to rule out lower urinary tract pathology.

A June 21, 2004 report contained an illegible signature and indicated that a urine culture was collected from appellant. A November 24, 2004 operative report which was electronically signed by Dr. Morton, indicated that he implanted a transobturator sling with pelvilace procine graft sling and performed a cystoscopy due to appellant's stress urinary incontinence. Dr. Morton's January 18, 2005 postoperative treatment note indicated that appellant was doing well with no stress incontinence. On physical examination, Dr. Morton noted some healing stitches in appellant's vaginal wall and her complaint of intermittent vaginal discharge for which he prescribed medication.

By letter dated March 16, 2005, appellant requested reconsideration. She submitted Dr. Morton's March 25, 2005 report in which he noted that appellant experienced significant urinary symptoms after her recent tour of duty. He stated that stress urinary incontinence, an overactive bladder and urge incontinence were definitely documented. Regarding causal relationship, Dr. Morton stated that, although he did not have an answer for all of appellant's symptoms or conditions, temporarily her urinary symptoms began after her tour of duty.

Appellant also submitted a treatment note and several reports, which contained Dr. Bossert's typed name. A December 9, 2004 treatment note indicated that on November 24, 2004 appellant underwent a hysteroscopy, dilation and curettage and nova sure with a pubovaginal sling with Dr. Morton and that she was doing fine. A September 3, 2004 report found that appellant had menometrorrhagia, anemia and urinary incontinence. A December 9, 2004 report found that she was doing well following the surgical procedure performed by

Dr. Bossert, as well as, the pubovaginal sling performed by Dr. Morton. Findings on physical examination were essentially normal and appellant was scheduled to follow-up with Dr. Bossert in a couple of months. A September 9, 2004 report provided a history of appellant's incontinence problem and medical treatment.

Appellant submitted a March 29, 2005 treatment note, which contained an illegible signature and revealed that she wanted to tell Dr. Bossert that she was feeling much better since her November 2004 surgery. In an April 1, 2005 report, Dr. Bossert stated that appellant advised his office on March 29, 2005 that she was doing fine following the November 24, 2004 surgery.

By decision dated May 11, 2005, the Office denied modification of the December 21, 2004 decision. The Office noted that appellant filed a "Timely Notice of Occupational Disease" attributing her urinary incontinence to unsanitary conditions during her detail assignment in Tikrit, Iraq. The Office, however, found that she failed to submit rationalized medical evidence establishing that her urinary condition was causally related to the accepted employment incident.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for payment of compensation for personal injuries sustained while in the performance of duty.[1] The Board has interpreted the phrase sustained while in the performance of duty as the equivalent of the coverage formula commonly found in workers compensation laws, namely, arising out of and in the course of employment.[2] The phrase in the course of employment is recognized as relating to the work situation and more particularly, relating to elements of time, place and circumstance. An injury must occur: (1) at a time the employee may be reasonably said to be engaged in the master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[3]

In determining whether an injury occurs in a place where the employee may reasonably be expected to be or constitutes a deviation from the course of employment, the Board will focus on the nature of the activity in which the employee was engaged and whether it is reasonably incidental to the employee's work assignment or represented such a departure from the work assignment that the employee becomes engaged in personal activities unrelated to his or her employment.[4]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

[1] 5 U.S.C. §§ 8101-8193.

[2] The construction makes the statute effective in those situations generally recognized as properly within the scope of workers compensation laws. *Bernard D. Blum*, 1 ECAB 1 (1947).

[3] *Janet M. Abner*, 53 ECAB 275 (2002).

[4] *Id*.

presence or existence of the disease or condition for which compensation is claimed;[5] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[6] and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[7] The evidence required to establish a causal relationship is rationalized medical opinion evidence, based on a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.[8]

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[9] The opinion of the physician must be based on a complete factual and medical background of the claimant,[10] must be one of reasonable medical certainty[11] 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.[12]

ANALYSIS

Appellants contends that she was exposed to unsanitary and contaminated facilities while in the performance of her work duties in Iraq from September 21, 2003 through April 27, 2004. The employing establishment stated that appellant was performing the duties of her employment at the time of injury. Based on the foregoing, the Board finds that appellant was in the performance of duty at the time that this employment incident occurred.

[5] *Solomon Polen*, 51 ECAB 341 (2000).

[6] *Marlon Vera*, 54 ECAB __ (Docket No. 03-907, issued September 29, 2003); *Janet L. Terry*, 53 ECAB 570 (2002); *Roger Williams*, 52 ECAB 468 (2001).

[7] *Ernest St. Pierre*, 51 ECAB 623 (2000).

[8] *Luis M. Villanueva*, 54 ECAB __ (Docket No. 03-977, issued July 1, 2003).

[9] *Conrad Hightower*, 54 ECAB __(Docket No. 02-1568, issued September 9, 2003).

[10] *Tomas Martinez*, 54 ECAB __ (Docket No. 03-396, issued June 16, 2003).

[11] *John W. Montoya*, 54 ECAB __ (Docket No. 02-2249, issued January 3, 2003).

[12] *Judy C. Rogers*, 54 ECAB __ (Docket No. 03-565, issued July 9, 2003).

Although the evidence establishes that appellant was subjected to unsanitary facilities during her tour of duty in Iraq, the Board finds the medical evidence of record insufficient to establish that she sustained a urinary condition caused by the accepted employment factor.[13] Appellant submitted Dr. Likes' November 29, 2003 report, which found that she suffered from stress and urge incontinence and Dr. Morton's October 8 and November 24, 2004 operative reports, which indicated that she underwent surgery due to her urgency and frequency and stress urinary incontinence. Dr. Morton's orders revealed that appellant had stress incontinence and metromenorrhagia. Dr. Likes' and Dr. Morton's reports and Dr. Morton's orders, however, fail to address whether the diagnosed conditions were caused by appellant's tour of duty in Iraq. Thus, the Board finds that this evidence is insufficient to establish appellant's claim.

Appellant also submitted unsigned treatment notes, preoperative and postoperative orders and reports, unsigned treatment notes and reports that contained Dr. Morton's and Bossert's typed name and a pathology report, which contained an illegible signature all of which found that she suffered from a urinary frequency and incontinence condition. This evidence is insufficient to establish appellant's claim because it is not clear that it is from a physician.[14] As the treatment notes and reports lack proper identification, the Board finds that they do not constitute probative medical evidence sufficient to establish appellant's burden of proof.

Dr. Apker's August 14, 2004 report revealed a normal renal ultrasound. Dr. Morton's January 18, 2004 postoperative report indicated that appellant was doing well and she did not have any stress incontinence. Dr. Bossert's April 1, 2005 report indicated that appellant was doing fine after the November 24, 2004 surgery. The reports of Dr. Apker, Dr. Morton and Dr. Bossert are insufficient to establish that appellant sustained an injury due to her tour of duty in Iraq because they did not opine that she suffered from a condition that was causally related to the accepted employment factor of exposure to unsanitary conditions.

In a September 15, 2004 treatment note, Dr. Morton stated that appellant had a history of "possible" urinary tract infection and an overactive bladder after arriving in Iraq and he recommended further medical procedures to rule out lower urinary tract pathology. Dr. Morton's treatment note recommended further evaluation and does not provide a definitive diagnosis. Thus, the Board finds that it is insufficient to establish appellant's burden of proof.

A February 19, 2004 treatment note from a lieutenant whose signature is illegible found that appellant developed an overactive bladder after arriving in Iraq. As found above, medical evidence that lacks proper identification does not constitute probative medical evidence sufficient to establish appellant's burden of proof. As it is not clear as to the whether the February 19, 2004 treatment was signed by a physician, the Board finds it insufficient to establish appellant's claim.

[13] The Board notes that the Office properly reviewed this case as an occupational injury claim although it was filed as a traumatic injury claim. The allegations pertained to conditions produced by the work environment over a period longer than a single day or work shift. *See* 5 U.S.C. § 8101(5) (injury defined); *see also* 20 C.F.R. § 10.5(q) ([o]ccupational disease or illness defined).

[14] *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

Dr. Lim's report indicated that appellant did not have any urinary problems prior to October 2003. He diagnosed her as having urinary frequency urgency during the day and stress urinary incontinence. Dr. Lim opined that the stress urinary incontinence was new since appellant's arrival in Iraq. He noted that he discussed different etiologies with her but he did not identify them. Dr. Lim did not explain on what medical basis he was able to conclude that appellant's urinary conditions were caused by the Iraq tour of duty employment factor. Thus, the Board finds that his opinion on causal relationship is of little probative value and is insufficient to discharge appellant's burden of proof.[15]

Similarly, the Board finds that Dr. Morton's March 25, 2005 opinion that appellant's stress urinary incontinence, overactive bladder and urge incontinences occurred after her recent tour of duty is insufficient to establish appellant's claim. He did not provide any medical rationale explaining how or why appellant's urinary problems were caused by her tour of duty in Iraq.

Appellant submitted treatment notes and discharge instructions regarding her urinary problems, which contain illegible signatures of nurses. The Board finds that these treatment notes and discharge instructions are of no probative value inasmuch as a nurse is not considered a "physician" under the Act.[16]

As there is no rationalized medical evidence of record establishing that appellant sustained a urinary injury in the performance of duty as alleged, the Board finds that she has failed to meet her burden of proof.

CONCLUSION

As appellant did not provide the necessary medical evidence to establish that she sustained an injury caused by the employment incident, her tour of duty in Iraq, the Board finds that she has failed to satisfy her burden of proof in this case.

[15] *Thomas D. Petrylak*, 39 ECAB 276 (1987) (when a physician concludes that a condition is causally related to an employment because the employee was asymptomatic before the employment injury, the opinion is insufficient without supporting medical rationale to establish causal relationship).

[16] 5 U.S.C. § 8101(2); *Vicky L. Hannis*, 48 ECAB 538, 540 (1997) (a nurse is not a physician under the Act).

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2005 and December 21, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 7, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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