

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

DEBORAH EVANS, Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
New Orleans, LA, Employer**

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**Docket No. 05-1690
Issued: October 24, 2005**

Appearances:
Deborah Evans, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 1, 2005 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated January 12, 2005, finding that she did not sustain an injury while in the performance of duty and an April 20, 2005 decision which denied modification of the January 12, 2005 decision. 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 on December 8, 2003 while in the performance of duty.

FACTUAL HISTORY

On November 22, 2004 appellant, then a 46-year-old clerk, filed a traumatic injury claim (Form CA-1) that was received by the Office on December 2, 2004. She alleged that in December 2003 she sustained pain in her neck and shoulder blade as a result of lifting a bucket

from an all purpose container (APC). The employing establishment indicated on the claim form that it received notice of the injury on November 24, 2004.

By letter dated December 10, 2004, the Office advised appellant that the information submitted was insufficient to establish her claim. The Office advised her about the type of evidence she needed to submit, including a detailed medical report from her attending physician that provided, among other things, “a history of injury given by you to the physician.”

In response, appellant submitted a December 14, 2004 medical authorization form which indicated that she was injured on December 8, 2003, that she sustained pain in her neck and shoulder blade and that her attending physician was Dr. Ralph P. Katz, a Board-certified orthopedic surgeon.

By decision dated January 12, 2005, the Office found that appellant filed a timely claim for compensation, but denied the claim on the grounds that she failed to establish that the December 8, 2003 incident occurred as alleged. The Office found that the evidence submitted by appellant did not describe a specific work injury.

On January 18, 2005 appellant requested reconsideration. She submitted page two of Dr. Katz’s November 21, 2003 report which noted her treatment plan. She also submitted an October 25, 2004 magnetic resonance imaging (MRI) scan report regarding her cervical spine. The report found posterior central disc protrusions at C4-5, C5-6 and C6-7 with variable anterior subarchnoid space effacement, but no cord deformity at any level.

In a November 2, 2004 report, Dr. Katz stated that appellant continued to experience chronic pain in her neck. He provided his findings on physical examination and noted the results of the October 25, 2004 MRI scan. Dr. Katz found that appellant had persistent posterior cervical pain in the trapezial muscle and posterior cervical musculature. An unsigned report dated November 17, 2003 noted appellant’s symptoms of chronic back pain, her medical, family and social background and findings on physical and x-ray examination. The report listed appellant’s chronic back pain that had become progressively worse over the past two months, with a possible pars defect at L5 bilaterally and no spondylolisthesis. Dr. Katz’s October 19, 2004 report noted appellant’s symptoms of continued pain in her neck. He provided his findings on physical examination and found that she had persistent problems in her trapezial muscle on the right, referred medial pain and possibly referred C6 or C7 pain, but no radicular symptoms associated with this condition. On April 12, 2004 Dr. Katz again noted appellant’s continued neck and right shoulder pain and found that she also had chronic low back pain. Dr. Katz noted that appellant was having cervical pain mainly in the trapezial muscle region on the right.

On April 20, 2005 the Office issued a decision denying modification of the January 12, 2005 decision. It found the reports of Dr. Katz insufficient to establish that appellant sustained an injury as the physician failed to provide a firm diagnosis.

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 filed within applicable time limitation; that an injury was sustained while 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁴ In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.

In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁵ 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.⁶ 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 cast sufficient doubt on an employee's statements in determining whether she has established a *prima facie* case. 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.⁷ The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ See *Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁷ *Id.* at 255, 256.

has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁸

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁹ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.¹⁰ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹¹

ANALYSIS

Regarding the first component, appellant has submitted an uncontroverted statement on her claim form and medical authorization form describing the incident she sustained in the performance of duty on December 8, 2003. The employing establishment did not dispute appellant's account of the incident. Although appellant filed her claim on November 22, 2004, nearly one year after the December 8, 2003 incident and initially indicated that the incident occurred in December 2003, there is no evidence disputing that she felt pain in her neck and shoulder blade as a result of lifting a bucket from an APC on the date. The Board finds that appellant has established that the incident occurred at the time, place and in the manner alleged.

The Board, however, finds that the medical evidence of record is insufficient to establish that appellant sustained an injury as a result of the accepted employment incident. Dr. Katz's report of November 21, 2003 addressed only appellant's treatment plan. His report did not provide a firm medical diagnosis, did not list a history of the December 8, 2003 incident and did not address the issue of causal relationship.

Dr. Katz's subsequent reports found that appellant had persistent cervical pain in the right trapezial muscle. However, Dr. Katz's reports are insufficient to establish appellant's claim because they failed to provide a firm diagnosis or explain the relationship of her symptoms to the accepted employment incident.

In addition, Dr. Katz listed chronic low back pain which has not been claimed by appellant as employment related. He identified possible C6 or C7 pain but, following diagnostic studies was not specific as to any spinal nerve root compression as the cause of her symptoms. Again, the reports of Dr. Katz fail to provide a statement on how the accepted incident caused or contributed to her cervical condition.

⁸ *Merton J. Sills*, 39 ECAB 572 (1988); *Vint Renfro*, 6 ECAB 477 (1954).

⁹ *John J. Carlone*, *supra* note 5; see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

¹⁰ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹¹ *Charles E. Evans*, 48 ECAB 692 (1997).

As there is no rationalized medical evidence of record establishing that appellant sustained a neck or shoulder injury while 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 December 8, 2003 employment incident, the Board finds that she has failed to satisfy her burden of proof in this case.

ORDER

IT IS HEREBY ORDERED THAT the April 20 and January 12, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 24, 2005
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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