

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

T.G., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
SALISBURY VETERANS ADMINISTRATION)
MEDICAL CENTER, Salisbury, NC, Employer)

Docket No. 09-256
Issued: August 3, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On November 4, 2008 appellant filed a timely appeal from an October 2, 2008 merit decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review. 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 established that she sustained a right arm injury in the performance of duty on January 24, 2008.

FACTUAL HISTORY

On February 4, 2008 appellant, a 38-year-old medical clerk, filed a traumatic injury claim (Form CA-1) for a bruised right elbow. She attributed her injury to an event on January 24, 2008 when, while putting paper in the nurse closet, a 20-pound pack of paper fell on to her right arm

below the elbow area. The employing establishment controverted appellant's claim on the grounds that there was no medical evidence substantiating her claim.

Appellant submitted no evidence in support of her claim and, by letter dated February 5, 2008, the Office notified appellant that the evidence of record was insufficient to support her claim. The Office requested that she submit additional evidence in support of her claim.

Responding to the Office's letter, appellant submitted a January 24, 2008 treatment report signed by an individual whose name is illegible. She also submitted a Form CA-16 dated February 1, 2008.¹

Appellant submitted a February 5, 2008 note signed by Dr. Acquawon Stallworth, Board-certified in family medicine, Dr. Obioma Anukwuem, a Board-certified internist, and Dr. Deidra McCants, Board-certified in family medicine, which stated that appellant could return to work on February 13, 2008.

By report dated February 4, 2008, Dr. Stallworth reported that appellant had chronic right shoulder pain for which she had undergone surgery in May 2007. He noted that on January 24, 2008 she was placing reams of paper in a closet when the paper fell and landed on her sore right shoulder. Dr. Stallworth noted that appellant had reproducible pain with passive and active movement of the right shoulder and weakness on the upper right extremity. He diagnosed her with chronically painful right shoulder.

In a February 13, 2008 report, Dr. Christopher K. Nagy, a Board-certified orthopedic surgeon, reported that appellant had some dependent edema and some swelling in her fingers. His assessment of her condition was nerve injury/impingement versus dependent edema, upper right extremity.

By decision dated March 12, 2008, the Office denied appellant's claim because the evidence of record was insufficient to establish that she sustained an injury as defined by the Federal Employees' Compensation Act.

Appellant disagreed and, through her attorney, requested a hearing. By letter dated July 10, 2008, the Office notified her that a hearing was scheduled for August 12, 2008 at 11:00 a.m. and that she and/or her representative should be present.

Appellant submitted a treatment report concerning appointments occurring on March 12 and 25, 2008 signed by Dr. Nagy. On March 12, 2008 Dr. Nagy noted the presence of some swelling in her arm as well as some tenderness in the right trapezial and supraspinatus region. He also noted that, other than this swelling, appellant had no other deformities. Dr. Nagy's assessment was that her condition was secondary to a mild nerve stretch injury with resultant pain and lack of function.

¹ The Board notes that the Office issued a Form CA-16. A properly executed Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *Elaine M. Kreyborg*, 41 ECAB 256, 259 (1989). The Form CA-16 issued to appellant authorized examination of appellant by OrthoCarolina Clinic of Charlotte, North Carolina, and was properly executed.

In a subsequent report dated April 17, 2008, Dr. Nagy reported that appellant was still experiencing some generalized aches, pains and burning sensations in her arm. In a May 29, 2008 medical report, he reported that appellant's arm was tender in the subacromial space but that she was neurovascularly intact. Dr. Nagy reported that x-rays revealed no abnormalities. Moreover, in August 25, 2008, he noted that there was some swelling present in appellant's arm and she experienced pain with mobilization.

By decision dated October 2, 2008, the Office's Branch of Hearings and Review affirmed the Office's March 12, 2008 decision because the evidence of record failed to establish that the diagnosed right upper extremity condition was causally related to an employment-related incident. The hearing representative also noted that the evidence failed to establish a firm injury-related diagnosis.

LEGAL PRECEDENT

An employee seeking benefits under the Act² has the burden of proof to establish the essential elements of her claim by the weight of the evidence,³ 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.⁴ As part of her burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶ Furthermore, a person who claims benefits for a work-related condition has the burden of establishing by the weight of the medical evidence a firm diagnosis of the condition claimed and a causal relationship between that condition and factors of federal employment.⁷

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.⁸ Second, the employee must submit

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *G.T.*, *supra* note 4; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁷ *See Roy L. Humphrey*, 57 ECAB 238 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

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.¹⁰

ANALYSIS

Appellant filed a traumatic injury claim for a bruised right elbow. She alleged that her injury arose from an employment-related event when a 20-pound pack of paper fell on to her right arm near the elbow area. As noted above, appellant's burden is to demonstrate, through the production of rationalized medical opinion evidence, based upon a complete factual and medical background, a causal relationship between a firmly diagnosed medical condition and an employment-related incident. The Board finds the evidence of record insufficient to satisfy her burden of proof because it lacks a firm diagnosis and a rationalized medical opinion causally relating the diagnosed condition to the employment incident.

The relevant medical evidence of record consisted of reports and notes from Drs. Stallworth and Nagy.¹¹ These physicians defined appellant's medical condition using a myriad of descriptive terms, including "nerve injury/impingement vs. dependent edema," mild nerve stretch and chronically painful right shoulder. This fact raises three issues that are pertinent to the analysis and disposition of appellant's appeal.

First, medical opinions that are speculative or equivocal in character are of diminished probative value. Dr. Nagy's February 13, 2008 medical report diagnosed appellant's condition "nerve injury/impingement vs. dependent edema, upper right extremity." The Board notes that by virtue of his use of "vs." in his diagnosis, Dr. Nagy's opinion is, at best, speculative, if not vague and equivocal, and therefore of no probative value.¹²

⁹ *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

¹⁰ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ The Board acknowledges that appellant submitted a note that was also signed by Drs. Anukwuem and McCants. This note, however, merely stated that appellant could return to work on February 13, 2008, and did not present anything of analytical significance to the relevant analysis such as a review of appellant's medical history or a diagnosis and, therefore, is not included in the tranche of relevant medical evidence for purposes of this analysis.

¹² *D.D.*, 57 ECAB 734 (2006).

Secondly, Dr. Stallworth's report reflects that appellant had a prior right shoulder injury for which she had undergone surgery in May 2007 and that his history regarding the January 2008 injury was that the ream of paper fell and landed on appellant's chronically sore right shoulder. This history of injury does not comport with appellant's statements that during the January 2008 event the ream of paper fell and struck her right arm below her elbow.

Furthermore, none of these physicians ever reduced appellant's condition to a firm diagnosis which they causally linked to the employment-related event.¹³ The Board has held that medical reports lacking an opinion on causal relationship are of limited probative value.¹⁴ Thus, these reports lack probative medical value in that they do not provide a firm diagnosis, are vague and equivocal, and fail to explain the causal relationship between appellant's condition and any work-related exposures.¹⁵

Although appellant alleged that her condition arose from a January 24, 2008 employment-related event when a 20-pound pack of paper fell on to her right arm near the elbow area, her allegation, in and of itself, is not sufficient to satisfy her burden of proof.¹⁶ The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹⁷ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹⁸ Causal relationship must be substantiated by reasoned medical opinion evidence, which appellant failed to submit. Therefore, appellant's belief that her condition was caused by the alleged work-related injury is not determinative.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Appellant did not provide a firm diagnosis of her right arm condition or a medical opinion that sufficiently described or explained how the January 24, 2008 employment-related event caused an injury. As she has failed to submit any probative medical evidence establishing that she sustained an injury in the performance of duty, the Office properly denied appellant's claim for compensation.

¹³ See *Roy L. Humphrey*, *supra* note 7; see *Naomi A. Lilly*, *supra* note 6.

¹⁴ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value). See also *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹⁵ See *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁶ *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

¹⁷ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁸ *Id.*

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establishing that her claimed right arm injury was sustained in the performance of duty on January 24, 2008.

ORDER

IT IS HEREBY ORDERED THAT the October 2 and March 12, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 3, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board