

On December 14, 2007 appellant, then a 46-year-old transportation security officer, filed a traumatic injury claim alleging that on November 19, 2007 she experienced severe pain in both her shoulders and arms and in her back. She claimed that from 5:00 a.m. to 7:00 a.m. that

morning she was assisting at Pier 9, away from her post at Level 7 and performing repetitive lifting. Appellant returned to her post around 7:05 a.m. and continued lifting. She reported the pain to her supervisor. The employing establishment controverted the claim. In a December 18, 2007 letter, it noted that appellant required hospitalization for back pain on November 11, 2007, several days prior to the alleged employment incident. The employing establishment also contended that appellant's claim described an occupational disease and not a traumatic injury.

By letter dated December 19, 2007, the Office notified appellant of the deficiencies in her claim and requested that she provide additional information.

In an incident report, appellant alleged that on November 19, 2007 she was working in Mac Bags and assigned to Level 7. She assisted at Pier 9 from approximately 5:00 a.m. to 7:00 a.m. and then returned to Level 7 to screen bags. Between 5:00 a.m. and 7:45 a.m. appellant lifted bags repeatedly. She stated that she used correct lifting techniques and attributed her pain to the repetitive lifting of bags. Appellant requested to go home that day because of the severity of pain in both shoulders, arms, back and underneath the breast area from her ribs. She noted that she had a follow-up appointment that afternoon for the November 11 and 12, 2007 hospitalization. In handwritten notes, appellant stated that her physician put her off work due to musculoskeletal pain from repetitive lifting and that she reported the incident to her supervisor at 7:45 a.m. on November 19, 2007.

On January 7, 2008 appellant alleged that on November 19, 2007 she experienced severe pain in both shoulders and arms and to her back after lifting a piece of luggage, weighing approximately 20 pounds, from a conveyor belt standing approximately waist high onto an inspection table. She notified her supervisor as soon as the incident occurred. When asked whether she wanted medical treatment, appellant stated that she had a follow-up appointment scheduled for following that afternoon her November 11 and 12, 2007 hospital visit. She stated that her employment required her to repetitively lift baggage onto a conveyor belt system. Appellant was also required to lift large items, including golf clubs, tool bags and boxes, guns and rifles, large bows and military duffel bags. Most of these larger items were lifted from the floor onto an inspection table. Appellant's weight requirement was previously 50 pounds but was raised to 70 pounds with assistance. On November 11, 2007 she experienced shoulder, arm and back pain and was awakened by severe pain in her lower back radiating into the center of her back. Appellant was treated as a heart patient in an emergency room and was admitted overnight. A stress test, chest x-ray and laboratory work were normal and she was released the next day but was off-duty until November 18, 2007. Appellant claimed that she still had pain in her back and her left shoulder and arm when she returned to work.

In a medical report dated November 11, 2007, Dr. Kempaiah A. Gowda, a Board-certified internist, stated that appellant had experienced intermittent chest and arm pain for the last few days and woke up the night before with back pain, which radiated down the left arm and subsequently into her lower extremity. He diagnosed chest pain, history of gastroesophageal reflux disease, history of depression and chronic low back pain. Dr. Gowda noted that appellant's atypical chest pains responded quickly to nitroglycerin tablets and could either be related to angina or gastroesophageal reflux disease.

In a November 12, 2007 medical note, appellant was admitted to the hospital on November 11, 2007 for chest and back pain. She was given a full workup, which was negative for myocardial ischemia. The physician opined that appellant's pain was likely of a musculoskeletal etiology and returned her to full duty on November 16, 2007.

In a November 21, 2007 attending physician's report, Dr. E.C. Bush, Board-certified in family medicine, stated that appellant was treated on November 19 and 21, 2007. He noted a history of chronic lumbosacral and thoracic strain. Dr. Bush diagnosed exacerbation of lower back pain. As to whether he believed that appellant's condition was caused or aggravated by the employment activity, he checked the box marked "yes." Dr. Bush placed appellant on disability from November 19, 2007 through January 18, 2008.

Appellant submitted emergency room records dated November 11 through 12, 2007 and medical records notes dated November 19, 2007 through January 10, 2008 for follow-up care. On November 19, 2007 Dr. Bush noted that appellant was following up from the hospital visit and that she was still having muscle pain and had to leave work early. He stated that her lower back pain was from lifting.

Appellant sought emergency room treatment on December 20, 2007 for bilateral shoulder and arm pain and decreased range of motion. She attributed the onset two weeks prior and stated that it was not related to trauma. Appellant was diagnosed with shoulder pain, most consistent with musculoskeletal or ligamentous pain. She was treated with Toradol and was discharged with follow-up instructions.

In a January 11, 2008 medical report, Dr. Bush acknowledged that he had known appellant for many years, was aware of her occupation with the employing establishment and that she was subject to overuse injuries secondary to the demands of her occupation. He stated that, in early November 2007, she reported to the hospital for chest pain and was evaluated for a cardiac diagnosis and released for follow up. Appellant had since been incapacitated by neck, shoulder and lingering back pain caused by the repetitive and strenuous nature of her occupation. She had a partial response to therapy but was still experiencing shoulder pain.

In a January 25, 2008 decision, the Office denied appellant's claim on the grounds that she did not establish that she sustained an injury due to the accepted work events. It noted that she was diagnosed with chronic lumbosacral strain and thoracic strain, however, there was no detailed evidence showing the relationship between these diagnosed conditions and the employment incident.

On February 26, 2008 appellant, through counsel, requested a telephonic hearing before an Office hearing representative.

At a May 28, 2008 telephonic hearing, appellant testified that a month prior to the onset of her back condition she accepted a position requiring heavier lifting. She noted a history of back problems prior to the November 2007 incident, for which she had been treated by Dr. Bush. On November 11, 2007 appellant was hospitalized after she woke up with chest and arm pain. She returned to work on November 18, 2007 but continued to experience pain in her arm and back. On November 19, 2007 appellant was lifting and felt pain in her arms, shoulders and back.

She contended that she sustained an injury on November 19, 2007 but that her neck injury happened over a period of time due to her employment. The Office hearing representative noted that the only claim was for a low back strain occurring on November 19, 2007 and that appellant would have to file a separate claim for a neck injury.

In a February 7, 2008 medical report, Dr. Bush stated that he treated appellant on November 19, 2007 for her back condition. Appellant stated that she injured her back at work, lifting luggage at the airport. Dr. Bush diagnosed traumatic lumbosacral strain and prescribed therapy including rest, heat, physical therapy and medication. He noted that appellant also developed myositis of the shoulders, neck and legs due to the repetitive and strenuous aspect of her work and that she had an overuse syndrome related to her work. Dr. Bush opined that appellant's injuries were significant and work related.

By decision dated August 11, 2008, the Office hearing representative modified the January 25, 2008 decision to find that appellant did not establish that she sustained an injury as alleged due to the factual and medical inconsistencies in the record. The hearing representative stated that appellant had initially claimed that the November 19, 2007 injury occurred after repetitive lifting, but later alleged that the injury occurred after lifting a 20-pound bag. Dr. Bush, in a January 11, 2008 report, did not mention the November 19, 2007 incident and implicated that the November 11, 2007 visit and appellant's repetitive work duties as the cause of her medical conditions. However, on February 7, 2008, he cited a lifting incident on November 19, 2007 but then related all of appellant's injuries to her duties and not any specific incident.

LEGAL PRECEDENT

An employee who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.² An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.³ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁴ 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.⁵ However, an

¹ 5 U.S.C. §§ 8101-8193.

² *D.B.*, 58 ECAB ____ (Docket No. 07-440, issued April 23, 2007); *George W. Glavis*, 5 ECAB 363, 365 (1953).

³ *M.H.*, 59 ECAB ____ (Docket No. 08-120, issued April 17, 2008); *George W. Glavis*, *supra* note 2.

⁴ *S.P.*, 59 ECAB ____ (Docket No. 07-1584, issued November 15, 2007); *Gus Mavroudis*, 9 ECAB 31, 33 (1956).

⁵ *M.H.*, *supra* note 3; *John D. Shreve*, 6 ECAB 718, 719 (1954).

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.⁶

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.⁷ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

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.⁹

ANALYSIS

The issue is whether appellant established that she sustained a back injury due to repetitive lifting on November 19, 2007. The Office, in the January 25, 2008 decision, initially accepted that the November 19, 2007 incident occurred as alleged but denied the claim on the grounds that appellant did not establish a causally related injury. An Office hearing representative modified this decision on August 11, 2008, finding that appellant did not establish that the November 19, 2007 incident occurred as alleged. The Board finds that she established that the November 19, 2007 incident occurred as alleged. However, appellant did not establish that she sustained an injury causally related to the November 19, 2007 employment incident.

Appellant filed a traumatic injury claim alleging that she experienced severe pain in both shoulders, arms and in her center and lower back on November 19, 2007 due to repetitive lifting at two different workstations. She immediately reported the injury to her supervisor and completed a contemporaneous incident report. In the incident report, appellant attributed her pain not from lifting one particular bag but from the repetitive lifting of bags. She sought

⁶ *S.P.*, 59 ECAB ____ (Docket No. 07-1584, issued November 15, 2007); *Wanda F. Davenport*, 32 ECAB 552, 556 (1981).

⁷ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁸ *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁹ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

medical treatment that day. In a November 19, 2007 medical note, Dr. Bush stated that appellant experienced back pain from lifting.

The Board finds that appellant established that the November 19, 2007 work incident occurred as alleged. Appellant claimed that she injured her back due to repetitive lifting over the course of her work shift on November 19, 2007.¹⁰ Although she noted that the pain occurred after lifting a 20-pound bag, she never attributed the condition solely to lifting that bag and noted that her injury occurred due to repetitive lifting during her November 19, 2007 work shift. Appellant immediately reported the injury to her supervisor, filled out an incident report and sought medical treatment that day. Dr. Bush's medical notes from the date of injury support appellant's claims that she sustained lower back pain from lifting and had to leave work early. At her telephonic hearing, appellant clarified that her neck injury was caused by repetitive lifting overtime, but, her back condition was due to lifting on November 19, 2007. This is consistent with Dr. Bush's February 7, 2008 report, where he diagnosed a traumatic lumbosacral strain based on appellant's claims that she injured her back while lifting luggage on November 19, 2007 and further noted that she developed myositis of her shoulders, neck and legs due to the repetitive and strenuous nature of her work.

The Board notes the employing establishment's objection to the claim due to appellant's hospitalization on November 11, 2007 only days prior to the injury. In a November 11, 2007 medical record, Dr. Gowda diagnosed chest pain, history of gastroesophageal reflux disease, history of depression and chronic low back pain. The mere fact that appellant sought treatment for pain in her low back days before the alleged work incident does not preclude her claim for any employment-related injury.

Appellant maintained that she sustained a back injury on November 19, 2007 due to the repetitive lifting of bags over the course of her work shift. Based on the medical and factual evidence of record. The Board finds that she established that the November 19, 2007 work incident occurred as alleged.¹¹ However, the Board finds that the medical evidence is insufficient to establish that appellant sustained injury due to the accepted incident.

Dr. Bush diagnosed appellant with lower back pain in an November 21, 2007 attending physician's report and the November 19, 2007 medical note. The Board has held that a diagnosis of pain does not constitute the basis for payment of compensation.¹² Only in a February 7, 2008 medical note did Dr. Bush provide a firm diagnosis of lumbosacral strain. He stated that he had treated appellant on November 19, 2007 and related her history that she was lifting luggage at work. Dr. Bush opined that her injuries were significant and work related. However, he did not address the cause of the lumbosacral strain beyond the fact that it was work related. Dr. Bush did not provide a rationalized medical opinion explaining the cause of the injury or its relationship to the November 19, 2007 employment incident.

¹⁰ This description is consistent with the definition of a traumatic injury, which is defined as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or work shift. 20 C.F.R. § 10.5(ee). *See also Ellen L. Noble*, 55 ECAB 530 (2004).

¹¹ *See M.H.*, *supra* note 3.

¹² *Robert Broome*, 55 ECAB 339 (2004).

Dr. Gowda's November 11, 2007 reports predate the November 19, 2007 employment incident and are not relevant to establishing her injury on that date.

There is insufficient medical evidence to establish that appellant sustained an injury in the performance of duty on November 19, 2007, as alleged. The Board finds that she did not meet her burden of proof to establish that she sustained an injury causally related to the November 19, 2007 employment incident.¹³

CONCLUSION

The Board finds that appellant established that the November 19, 2007 employment incident occurred at the time, place and in the manner alleged; however, she did not establish that she sustained an injury causally related to the November 19, 2007 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2008 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed, as modified.

Issued: June 22, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ See *Kathryn E. Demarsh*, 56 ECAB 677 (2005).