

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

D.A., Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Cheektowaga, NY, Employer**

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**Docket No. 08-2122
Issued: May 4, 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 July 29, 2008 appellant, through counsel, timely appealed an Office of Workers' Compensation Programs' June 10, 2008 decision denying modification of an April 2, 2008 merit 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 met her burden of proof to establish that she sustained an injury in the performance of duty on September 16, 2005.

FACTUAL HISTORY

On September 19, 2005 appellant, a 59-year-old employee working for the Federal Emergency Management Agency (FEMA), filed a traumatic injury claim (Form CA-1) for an alleged injury on September 16, 2005 that occurred when the chair in which she was sitting fell

backwards, causing appellant to fall. She landed on her left side, producing pain and numbness in her leg and hand. Appellant did not stop work or seek immediate medical treatment.

Appellant's September 19, 2005 claim was not received by the Office until February 25, 2008. She submitted no medical evidence in support of her claim. By letter dated February 26, 2008, the Office notified appellant that the evidence submitted was insufficient to support her claim. It requested that she submit substantive medical evidence and requested that she submit responses to a series of questions.

In an undated personal statement, appellant stated that her condition arose from the constant movement of the computer mouse and the arm motion associated with the task. She also reported experiencing a painful burning sensation in her shoulder, so acute that she required heavy pain medication and Lidocaine shoulder patches to control the pain.

Further, appellant submitted a January 4, 2008 letter signed by Dr. David E. Hoffman, a Board-certified neurologist, who reported that appellant was told by a therapist that her condition was related to an injury in her neck or shoulder. Dr. Hoffman opined that appellant's condition is symptomatic left carpal tunnel syndrome. He noted that electrodiagnostic testing was needed to establish a diagnosis.

On September 14, 2006 Dr. Eric Waffner, a Board-certified internist, prescribed massage therapy and an arm support.

Appellant submitted no additional medical evidence, and by decision dated April 2, 2008 the Office denied appellant's claim. The Office concluded that the evidence appellant submitted was insufficient to establish the relationship between the injury and the medical condition. It noted that the agency controverted the claim because it had originally been handled as a "no lost time, no medical case."

Appellant submitted to electrodiagnostic testing and Dr. Hoffman, in an April 16, 2008 letter, reported that the testing revealed moderate left carpal tunnel syndrome. Dr. Hoffman recommended that appellant consult a hand surgeon regarding endoscopic or open carpal tunnel release.

Appellant requested reconsideration on May 5, 2008. In support of her request, she submitted an undated personal statement in which she responds to the questions posed by the Office in its February 28, 2008 letter. Appellant reported that, on September 16, 2005, while answering FEMA telephone calls, the chair in which she was sitting tipped over causing her to fall to the floor. She immediately experienced numbness and pain in her left hand, as well as pain in her shoulder, left leg and side. Appellant did not seek immediate medical attention because she thought the pain was temporary. She asserted that this event was the onset of her carpal tunnel syndrome and that continued employment-related use had aggravated it.

By decision dated June 10, 2008, the Office denied modification of its prior decision.¹

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 filed within the 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether fact of injury is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁶

ANALYSIS

The Board accepts that appellant, while seated in a chair at work, fell backwards as alleged on September 16, 2005. She initially filed the claim on September 19, 2005 but did not stop work or require acute medical treatment. The evidence of record does not controvert the occurrence of this incident. However, the Board finds that appellant failed to meet her burden of proof in establishing that she sustained a compensable employment-related injury in the performance of duty on September 16, 2005.

While appellant expressed her belief that her alleged medical conditions resulted from the September 16, 2005 incident, 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.⁷ Neither the fact that the condition became apparent during a period of

¹ Additional evidence in the case was received by the Office after appellant filed her July 29, 2008 appeal and were therefore not part of the record considered by the Office. The Board has no jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c). *See also Esther B. Sjostedt*, 9 ECAB 100 (1956).

² 5 U.S.C. §§ 8101-8193.

³ *Anthony P. Silva*, 55 ECAB 179 (2003).

⁴ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship. Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit. Therefore, her belief that her condition was caused by the work-related incident is not determinative.⁸

Dr. Hoffman's medical reports and letter are of limited probative value. His January 4, 2008 letter, by his own admission, required additional electrodiagnostic tests. Equivocal in nature and unsupported by rationale, Dr. Hoffman's opinion in this letter is of limited probative value. Similarly, while his subsequent medical report diagnosed appellant with left carpal tunnel, his report furnishes no rationalized medical opinion on a causal relationship and is therefore of limited probative value and insufficient to establish appellant's claim.

The remaining medical evidence, consisting of two medical notes from Dr. Waffner, does not report findings upon examination or contain an opinion as to the cause of a diagnosed condition. As such, these medical notes are of limited probative value and are insufficient to establish appellant's claim.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Therefore, appellant failed to submit appropriate medical documentation in response to the Office's request.

As there is no probative rationalized medical evidence addressing how appellant's alleged injury was caused or aggravated by her employment, she has not met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to the employment incident.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an injury while in the performance of duty on September 16, 2005.

⁸ *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 10, 2008 is affirmed.

Issued: May 4, 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