

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

R.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Apple Valley, CA, Employer**

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**Docket No. 09-663
Issued: October 16, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 8, 2009 appellant filed a timely appeal from the December 8, 2008 merit decision of the Office of Workers' Compensation Programs denying her traumatic injury claim. 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 a right forearm, hand or shoulder injury on April 21, 2008.

FACTUAL HISTORY

On April 21, 2008 appellant, then a 47-year-old distribution clerk, filed a traumatic injury claim alleging that a coworker placed a tub of flats on her right forearm on that date causing injury to her forearm, hand and shoulder. She did not stop work.

On May 1, 2008 the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and the employment incident.

Appellant submitted a report dated April 21, 2008 from a physician's assistant who diagnosed contusion of the right forearm, wrist and hand and returned her to regular duty on April 23, 2008. She underwent an x-ray of the right wrist on April 21, 2008 which revealed a questionable sclerotic line in the scaphoid bone and an x-ray of the right elbow which was unremarkable. Appellant was treated by Dr. Joseph Rodriguez, a Board-certified family practitioner, from April 23 to May 21, 2008. She reported being assaulted by a coworker who threw two tubs of mail on her right arm. On physical examination, Dr. Rodriguez noted grip weakness, limited flexion of the elbow and pain along the medial forearm. He diagnosed arm injury and recommended appellant stay off work for two weeks. On May 7, 2008 Dr. Rodriguez noted appellant's complaints of right arm pain, mild swelling and decreased grip strength and diagnosed right hand pain. Appellant underwent an x-ray of the right wrist on April 28, 2008 and an x-ray of the right hand dated May 7, 2008 which revealed no abnormalities.

In a decision dated June 23, 2008, the Office denied appellant's claim, finding that the medical evidence was not sufficient to establish that she sustained injury to her right arm caused by the April 21, 2008 work incident.

On July 1, 2008 appellant, through her attorney, requested an oral hearing which was held on October 6, 2008. She submitted a April 21, 2008 police report pertaining to an injury at work when a coworker placed two bins full of magazines on a cart she was pushing. Appellant sought treatment on May 28, 2008 from Dr. Rodriguez, who referred her for physical therapy. In return to work slips dated June 18 and July 2, 2008, Dr. Rodriguez advised that appellant was totally disabled from June 18 to July 16, 2008. Appellant submitted physical therapy notes dated June 2, 2008 for treatment of inflammation over the right forearm.

On July 14, 2008 appellant was treated by Dr. Rajiv Puri, a Board-certified orthopedic surgeon, who diagnosed crush injury to the right forearm with resolution of some symptoms. She reported a history of her right arm being crushed under a mail tub along with the weight of another worker. Dr. Puri noted no obvious swelling or bruising over the right forearm, no tenderness, normal reflexes with slight weakness of the grip strength of the right hand. He recommended a wrist brace, physical therapy and returned appellant to modified duty. On October 2, 2008 Dr. Puri noted treating her for right forearm pain which she attributed to another employee slamming a tub of mail onto her right forearm. He advised that appellant developed symptoms of nerve pain over the ulnar distribution of the right forearm due to the crush injury. Dr. Puri opined that she sustained a work-related injury to the right forearm from the mail tub incident that occurred at work.

In a decision dated December 8, 2008, an Office hearing representative affirmed the June 23, 2008 decision.

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 the applicable time limitation of the Act, that an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

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 which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

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. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

Appellant alleged that she sustained a right forearm injury when trays of mail were placed on top of her right forearm. The Board notes that the evidence supports that the incident

¹ 5 U.S.C. §§ 8101-8193.

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Id.*

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

occurred on April 21, 2008, as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a right forearm injury causally related to the April 21, 2008 work incident.

On May 1, 2008 the Office advised appellant of the medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from an attending physician addressing how the April 21, 2008 work incident caused or aggravated her claimed condition.

On April 21, 2008 a physician's assistant treated appellant for a contusion of the right forearm, wrist and hand. Appellant also submitted physical therapy notes for treatment of inflammation over the right forearm. The Board has noted that physical therapists and physician's assistants are not physicians as defined under the Act and not competent to render a medical opinion.⁷ Therefore, these reports are insufficient to establish appellant's claim of injury.

From April 23 to May 7, 2008, Dr. Rodriguez treated appellant for right arm pain. Appellant reported being assaulted on the job when a coworker threw two tubs of mail on her right arm. Dr. Rodriguez noted findings on examination and made a diagnosis of arm injury, the nature of which was not specified. He did not provide an opinion addressing whether appellant's condition was work related. Dr. Rodriguez failed to provide a rationalized opinion explaining how appellant's right arm condition was caused or aggravated by the accepted incident.⁸ Appellant also submitted return to work slips dated April 23 to July 2, 2008 from Dr. Rodriguez; however, these notes do not provide any firm medical diagnoses,⁹ provide a history of injury,¹⁰ or offer any opinion on how the accepted employment incident could have caused or aggravated her condition.¹¹ Consequently these reports are of diminished value and do not establish her traumatic injury claim.

On July 14, 2008 Dr. Puri diagnosed a crush injury to the right forearm with resolution of some symptoms. He noted that appellant apparently presented with a history of her right arm being crushed under a mail tub. On October 2, 2008 Dr. Puri treated her for right arm pain and she again reported it was caused by another employee who willfully slammed down a tub of mail onto her right forearm. He opined that appellant developed symptoms of nerve pain over the

⁷ See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

⁸ See *Jimmie H. Duckett*, *supra* note 6.

⁹ See *Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

¹⁰ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

¹¹ *A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

right forearm due to the work-related crush injury to the right forearm. However Dr. Puri merely repeated the history of injury obtained from appellant without providing his own opinion regarding how her condition was work related. To the extent that the doctor is providing his own opinion, Dr. Puri failed to explain why any diagnosed conditions were caused or aggravated by particular factors of employment.¹²

The diagnostic tests of record, the x-rays and MRI scan reports, are insufficient to establish appellant's claim as they do not provide a physician's opinion on the causal relationship between her job factors and a diagnosed medical condition.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.¹³ Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a right forearm, hand and shoulder injury causally related to her April 21, 2008 employment incident.

¹² See *supra* note 6.

¹³ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2009
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board