United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 10-802**
	)	**Issued: November 29, 2010**
TENNESSEE VALLEY AUTHORITY, SHAWNEE STEAM PLANT, Paducah, KY, Employer	)	

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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 1, 2010 appellant filed a timely appeal from the December 29, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 5 U.S.C. § 8149 of the Federal Employees' Compensation Act and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether appellant established that she sustained a left shoulder injury in the performance of duty on October 15, 2008.

FACTUAL HISTORY

On June 17, 2009 appellant, then a 55-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on October 15, 2008 she hurt her left shoulder when she was pulling trash. A few minutes after pulling trash, her shoulder started hurting so bad she began to cry. Appellant told her supervisor who took her to the nurse's station and later to her physician.

By letter dated June 19, 2009, the Office advised appellant of the deficiencies of her claim and provided 30 days to submit additional evidence.

The employing establishment controverted the claim, alleging inconsistencies. Appellant had complaints of left shoulder pain prior to October 15, 2008. In September 2008, she fell from a porch at her home, lost consciousness and sustained a fractured foot. Appellant did not allege that her claimed shoulder condition was work related until June 2009, after she had additional neck problems.

Appellant submitted additional evidence on July 13, 2009, including an outpatient record, which contained handwritten notes, bearing illegible signatures, from the employing establishment medical facility dated from September 12, 2005 through June 10, 2009. An entry dated October 15, 2008 reported that she came to the health station complaining of left shoulder and neck pain. "Employee state[d] [that] she has neck spasms often, states she probably slept wrong." Appellant was advised to visit her personal physician and the notes reflect that she was transported there. She further submitted a medical report from an Acute Care facility dated October 15, 2008, signed electronically by Dr. Robert E. Fell, a physician.

Additional medical evidence included physical therapy notes dated January 6 and 23, 2009; magnetic resonance imaging (MRI) scans of the cervical spine and left shoulder dated May 26, 2009; a report dated June 9, 2009 and a work release form for the period June 9 to 17, 2009 signed by Dr. Bassam Hadi, Board-certified in neurological surgery, of Kentucky Spine and Brain; a letter from Dr. Allen L. Tinsley, Board-certified in internal medicine, dated June 9, 2009 noting that appellant was to have a consult with a neurosurgeon due to a C7-T1 disc rupture with forminal stenosis; cervical myelogram report and a computerized tomography scan dated June 12, 2009; electrodiagnostic studies dated June 15, 2009; and June 30, July 1 and 3, 2009 reports of Dr. Calvin Shanks, a chiropractor, as well as an x-ray report taken by the McCracken County Chiropractic clinic on June 30, 2009.

By decision dated July 30, 2009, the Office denied appellant's claim. It found that the medical evidence did not establish that the condition of a C7-T1 disc rupture resulted from the accepted event.

Appellant requested an oral hearing which was held on November 4, 2009. The hearing representative, in a December 29, 2009 decision, affirmed the Office's decision, finding that the medical evidence of record failed to establish that appellant's diagnosed cervical radiculopathy, was causally related to her employment.

LEGAL PRECEDENT

An employee seeking compensation under the Act[1] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,[2]

[1] 5 U.S.C. §§ 8101-8193.

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

including that she is an "employee" within the meaning of the Act[3] and that she filed her claim within the applicable time limitation.[4] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[5]

When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[6]

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.[7]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained a left shoulder injury in the performance of duty on October 15, 2008. There is no dispute that appellant suffers from cervical radiculopathy. The evidence does not establish, however, that such condition is causally related to her employment duties.

In support of her claim, appellant submitted an outpatient record with handwritten notes from the employing establishment medical facility dated from September 12, 2005 through June 10, 2009. An entry dated October 15, 2008 reported that she came to the health station complaining of left shoulder and neck pain. It noted: "Employee state[d] [that] she has neck spasms often, states she probably slept wrong." Appellant was advised to visit her personal physician and the notes reflect that she was transported there. The signatures on these records, however, are illegible and thus cannot be ascertained as being prepared by a physician, as

[3] *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[4] *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *See E.A.*, 58 ECAB 677 (2007); *Arthur C. Hamer*, 1 ECAB 62 (1947).

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

defined in the Act.[8] The Board has held that medical reports lacking proper identification cannot be considered as probative medical evidence in support of a claim.[9]

Appellant further submitted an October 15, 2008 report from Dr. Fell, who diagnosed cervicalgia, neck pain, intervertebral disc disorder with cervical myelopathy, myalgia and myositis unspecified and hypertension, benign. Although supportive of the existence of an injury on that date, Dr. Fell provided no opinion on the cause of the diagnosis. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10]

Similarly, in a June 9, 2009 report and work release form, Dr. Hadi noted appellant's complaints of left upper extremity pain in an ulnar distribution, ordered diagnostic tests and excused her from work from June 9 to 17, 2009. Although he noted "she was involved in an accident," he offered no opinion as to the cause of the conditions. Therefore, Dr. Hadi's report is of diminished probative value.

On June 9, 2009 Dr. Tinsley noted that appellant was to have a consult with a neurosurgeon due to a C7-T1 disc rupture with forminal stenosis. He stated that the etiology of her injury was unknown. Dr. Tinsley did not provide examination findings or a complete history of injury or treatment. Most significantly, he did not provide an opinion of the cause of the diagnosed condition. Accordingly, Dr. Tinsley's report is of limited probative value.

The record also included reports from Dr. Shanks, a chiropractor, from June 30 to July 3, 2009 and an x-ray report noting hypolordosis of the cervical spine, an anterior head carriage and levoscoliosis. A chiropractor is considered a physician for purposes of the Act only where he diagnoses subluxation by x-ray. As appellant's treatment was not based on x-rays showing subluxation and treatment thereof, Dr. Shank's reports do not constitute probative medical evidence.[11]

The record also contains physical therapy reports dated January 6 and 23, 2009. As nurses, physician's assistants, physical and occupational therapists are not "physicians" as defined by the Act, their opinions regarding diagnosis and causal relationship are of no probative medical value.[12]

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[8] *Supra* note 1 at § 8101(2).

[9] *D.D.*, 57 ECAB 734, 739 (2006).

[10] *A.D.*, 58 ECAB 303, 307 (2006).

[11] Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." *See Paul Foster*, 56 ECAB 208 (2004); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] *See Roy L. Humphrey*, 57 ECAB 238 (2005).

The remaining medical evidence of record, including reports of electromyograms, MRI scans, x-rays and other diagnostic tests, which do not contain an opinion on causal relationship, are of limited probative value and are insufficient to establish appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.[13] Appellant failed to submit evidence sufficient to establish a causal connection between the October 14, 2008 injury and her work duties. As such, the Office properly denied her claim for compensation.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for compensation.

ORDER

IT IS HEREBY ORDERED THAT the December 29, 2009 decision of the Office of Workers' Compensation Program is affirmed.

Issued: November 29, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[13] *D.I.*, 59 ECAB 158 (2007)*; Ruth R. Price*, 16 ECAB 688, 691 (1965).