

On August 15, 2008 appellant, then a 54-year-old rural carrier, filed a traumatic injury (Form CA-1) claiming that she sustained a “slipped disc” in her neck with radiculopathy into the left arm on August 13, 2008 while pulling bent, rusted metal dividers from casing shelf units at

her workstation. She delivered her route on August 14 and 15, 2008, stopped work on August 16, 2008 and did not return.

Appellant was first followed by Dr. Samuel K. St. Clair, an attending Board-certified neurosurgeon. In November 25 and December 15, 2008 reports, Dr. St. Clair noted her account of neck and left arm pain after pulling metal dividers at work on August 13, 2008. In a January 5, 2009 report, he noted that a cervical magnetic resonance imaging scan showed multilevel disc herniations and spinal cord compression.

In a January 14, 2009 letter, the Office advised appellant of the evidence needed to establish her claim, including a rationalized report from her attending physician supporting the claimed causal relationship. It noted that Dr. St. Clair's reports were insufficiently rationalized to meet appellant's burden of proof. In response, she submitted January 25, 2009 reports from a chiropractor referring her to a neurosurgeon.

By decision dated February 23, 2009, the Office denied the claim on the grounds that causal relationship was not established. It accepted the August 13, 2008 incident as factual. The Office found, however, that the medical evidence did not explain how and why pulling the metal dividers would cause the claimed neck condition.

In an August 31, 2009 letter, appellant, through counsel, requested reconsideration. In a June 15, 2009 letter to Dr. Peter R. Bronec, an attending Board-certified neurosurgeon, counsel requested a medical narrative.

In a June 30, 2009 report, Dr. Bronec diagnosed radiculopathies and early myelopathy from C5 to C7 due to cervical stenosis and disc protrusion "aggravated by a cervical strain." He stated that appellant's "work probably at least aggravated an underlying condition of degenerative disc disease/spondylosis in her neck." Dr. Bronec noted her description of "hammering to remove metal shelves from her workstation on August 15, 2008." He opined that "[s]uch strenuous work with the arms can result in stress on the neck and irritation of any nerves that are already crowded or compressed in the neck." Dr. Bronec scheduled appellant for C4-5, C5-6 and C6-7 anterior discectomies and fusions.

By decision dated October 19, 2009, the Office denied modification of its prior decision on the grounds that the additional evidence was insufficient to establish causal relationship. It found that Dr. Bronec used equivocal language and gave an incorrect date of injury.

In a November 1, 2009 letter, appellant, through counsel, requested reconsideration. Counsel asserted that Dr. Bronec's reference to an August 15, 2008 incident instead of August 13, 2008 was a typographical error.¹ He contended that the record as a whole supported causal relationship.

¹ The record contains counsel's letters to federal officials, asserting that the compensation claims process is unfair.

By decision dated January 7, 2010, the Office denied modification on the grounds that the new evidence submitted did not establish causal relationship. It again found that Dr. Bronec's opinion was equivocal and provided an incorrect date of injury.

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

In order to determine whether an employee sustained a traumatic 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 that must be considered jointly. First, the employee must submit sufficient evidence to establish that he or she actually experienced the alleged employment incident.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

ANALYSIS

Appellant claimed that, on August 13, 2008, she injured her neck while pulling metal shelf dividers. The Office accepted the August 13, 2008 incident as factual, but denied the claim as the medical evidence did not establish that pulling shelf dividers caused the claimed neck injury.

In support of her claim, appellant submitted medical evidence from two physicians. Dr. St. Clair, an attending Board-certified neurosurgeon, noted the August 13, 2008 work incident but did not attribute any medical condition to it. As he did not support causal relationship, his opinion is not supportive of appellant's claim.⁷

Dr. Bronec, an attending Board-certified orthopedic surgeon, stated in a June 30, 2009 report that appellant pulled metal shelves at work on August 15, 2008. However, the accepted

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁷ *A.D.*, 58 ECAB 149 (2006).

incident occurred on August 13, 2008. Dr. Bronec's inaccuracy diminishes the probative value of his opinion.⁸ He provided four paragraphs addressing counsel's inquiry and opined that pulling the shelves could have stressed appellant's neck and "probably at least aggravated" underlying degenerative disc disease. Dr. Bronec's opinion on causal relationship is speculative at best and is insufficient to establish that pulling metal shelves caused the claimed neck condition.⁹ The report did not provide a full or accurate factual background of appellant's cervical history, prior treatment or explanation as to how her degenerative disc disease was exacerbated or aggravated by the accepted incident at work.

In a January 13, 2009 letter, the Office advised appellant of the necessity of providing rationalized medical evidence in support of her claim. However, appellant did not submit such evidence. As she failed to meet her burden of proof, the Office properly denied the claim.

On appeal, counsel asserts that the Office ignored uncontroverted evidence of a work-related injury and applied an incorrect burden of proof. As noted, the Board finds that appellant submitted insufficient rationalized medical evidence to establish that the accepted August 13, 2008 incident caused or contributed to her cervical condition.

CONCLUSION

The Board finds that appellant has not established that she sustained a cervical spine injury on August 13, 2008, as alleged.

⁸ *M.W.*, 57 ECAB 710 (2006); *John W. Montoya*, 54 ECAB 306 (2003).

⁹ *D.E.*, 58 ECAB 369 (2007).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 7, 2010 is affirmed.

Issued: January 11, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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