

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

C.B., Appellant)

and)

**DEPARTMENT OF HEALTH & HUMAN
SERVICES, NORTHWEST REGIONAL
LABORATORY, Jamaica, NY, Employer**)

**Docket No. 12-270
Issued: June 14, 2012**

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

JURISDICTION

On November 22, 2011 appellant, through her attorney, filed a timely appeal from an October 24, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 met her burden of proof to establish that her right arm, elbow, shoulder and cervical conditions were caused by the accepted January 31, 2011 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 18, 2011 appellant, then a 52-year-old biological science technician, filed a claim for traumatic injury alleging injury to her right arm, elbow and shoulder when she caught her foot in an electrical cord while rising from her chair on January 31, 2011.²

In a form report dated February 4, 2011, Dr. Ahmed Fahmy, Board-certified in internal medicine, examined appellant that day. He found that she was disabled from January 31 until February 4, 2011, but could return to work.

On February 11, 2011 Dr. Robert Rothberg, Board-certified in emergency medicine, diagnosed appellant with right elbow and neck contusions.

On March 9, 2011 appellant submitted a physical therapy authorization request for her cervical condition from Dr. Deborah Eisen, Board-certified in family practice. OWCP informed appellant in a March 10, 2011 letter that further medical development was needed before the request could be approved.

By letter dated March 14, 2011, OWCP explained that appellant's claim was initially administratively approved for a limited amount of medical expenses because the injury was minor and resulted in minimal lost time from work. It reopened her claim for consideration because she had requested authorization for additional medical treatment. OWCP advised appellant of the deficiencies in her claim and requested that she submit a physician's report which provided a medical explanation as to how the January 31, 2011 work incident caused or aggravated a medical condition.

Appellant filed a recurrence of disability claim on March 21, 2011 alleging that she sought medical treatment on February 21, 2011 as a result of the January 31, 2011 injury.

On March 29, 2011 OWCP received a March 7, 2011 attending physician's report from Dr. Eisen who diagnosed appellant's condition as cervical pain, brachial plexus pain, muscle spasm and muscle pain. Dr. Eisen also checked a box "yes" to the form question of whether the diagnosed conditions were related to the employment.

In an April 21, 2011 decision, OWCP denied appellant's claim on the grounds that the medical evidence did not establish that her claimed conditions were causally related to her accepted work incident.

On April 28, 2011 OWCP received a March 15, 2011 report from James Avellini, M.D., who diagnosed cervical radiculopathy.

On May 6, 2011 appellant requested a hearing before the Branch of Hearings and Review.

² The Board notes that, while appellant did not initially claim a cervical condition, medical evidence was submitted which provided a cervical diagnosis.

The hearing was held on August 10, 2011. Appellant testified that she caught her foot on an electrical cord and fell onto her right side, sustaining right arm, elbow and shoulder injuries. She sought medical treatment and stopped work on February 28, 2011. Appellant advised that she had not returned to work. Her representative requested that the case be held open for the submission of additional medical evidence.

On August 18, 2011 appellant submitted a February 11, 2011 report from Dr. Rothberg who noted her complaints of right elbow and shoulder pain since the fall at work on January 31, 2011. Dr. Rothberg related that her right elbow x-ray showed evidence of an old fracture prior to January 31, 2011 and that she denied knowledge of any previous elbow injury. An x-ray report from February 4, 2011 displayed a small healing fracture in good alignment.

On August 19, 2011 OWCP received a February 11, 2011 x-ray report of appellant's right elbow from Dr. Renata La Rocca Viera, a radiologist. The x-ray was interpreted as showing "no evidence of fracture" and evidence of an old healed fracture. OWCP also received a May 20, 2011 report from Dr. Stephen Greenberg, a Board-certified specialist in neuroradiology, who diagnosed appellant's condition as multilevel spondylosis based upon MRI scan examination of her cervical spine.

On August 26, 2011 OWCP received a report dated May 13, 2011 from Dr. Vikas Varma, a Board-certified neurologist, who noted appellant's history of a fall at work with injuries to her right arm. Dr. Varma related that appellant developed neck pain approximately six weeks later. He diagnosed C4-5 spondylosis with neck pain.

OWCP also received a March 7, 2011 report from Dr. Eisen on September 26, 2011. Dr. Eisen diagnosed brachial neuritis and radiculitis, cervical segmental dysfunction, cervical myalgia and cervical and thoracic muscle spasm. In addressing the issue of whether appellant's diagnosed conditions were causally related to the work incident she explained that "direct trauma to the elbow and shoulder would cause a possible chip fracture and result in inflammation and spasm due to the kinetic chain."

In an October 24, 2011 decision, an OWCP hearing representative affirmed the April 21, 2011 decision finding that appellant failed to establish that her medical conditions were caused by the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden to establish the essential elements of her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

³ 5 U.S.C. §§ 8101-8193.

⁴ *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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. 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.⁵ The employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

Rationalized medical opinion evidence is medical evidence which includes a physician's 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, 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 compensable employment factors identified by the claimant.⁷

ANALYSIS

The Board finds that appellant submitted insufficient medical evidence to establish that she sustained a right arm, elbow, shoulder or cervical conditions as a result of the January 31, 2011 employment incident. She has not submitted medical evidence which establishes causal relationship.

Appellant was initially seen by Dr. Fahmy on February 4, 2011. Dr. Fahmy reported appellant's disability status, but did provide a diagnosis or any opinion regarding the cause of the conditions for which she was treated. On February 11, 2011 appellant was seen by Dr. Rothberg who diagnosed right elbow and neck contusions but offered no opinion regarding the cause of these conditions.

In a March 7, 2011 attending physician's form report, Dr. Eisen diagnosed appellant's condition as "cervical pain, brachial plexus pain, muscle spasm and muscle pain." The Board has held that pain is generally considered a symptom, not a firm medical diagnosis.⁸ As such, this report is of diminished probative value as it did not provide a firm diagnosis of appellant's condition. The Board notes that Dr. Eisen addressed causal relationship by checking a box "yes." The Board has held that an opinion on causal relationship, which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history, is of diminished probative value.⁹

⁵ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁶ *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁷ *D.G.*, 59 ECAB 734 (2008); *G.T.*, 59 ECAB 447 (2008); *I.J.*, 59 ECAB 408 (2008).

⁸ *J.W.*, Docket No. 11-1475 (issued December 7, 2011); *Robert Broome*, 55 ECAB 339, 342 (2004).

⁹ *Lucrecia, M. Nelson*, 42 ECAB 583, 594 (1991).

Dr. Eisen submitted a March 7, 2011 report which was narrative in nature. It provided a description of appellant's work incident and diagnosed brachial neuritis/radiculitis, cervical segmental dysfunction, cervical myalgia, and cervical and thoracic muscle spasm. Dr. Eisen stated that the trauma to appellant's elbow and shoulder caused a possible chip fracture and resulted in inflammation and spasm. The Board notes, however, that Dr. Eisen's opinion regarding a "possible" chip fracture does not address the fact that the radiographic evidence of record suggests that appellant's right elbow fracture occurred prior to January 31, 2011. Furthermore, Dr. Eisen did not offer a rationalized explanation as to the cause of the cervical conditions she diagnosed. It is unclear whether she related the cervical conditions to inflammation from the "possible" chip fracture of the elbow. As such, this report also failed to satisfy the causal relationship requirement.

Dr. Avellini diagnosed cervical radiculopathy in his March 15, 2011 report; however, he did not provide any medical rationale explaining how appellant's employment incident had caused the diagnosed condition. The Board has held that medical reports lacking a rationale on causal relationship are of diminished probative value.¹⁰ As such, this report is also of limited probative value.

Dr. Varma's May 13, 2011 medical report lacks probative value as it did not adequately address the causal relationship issue. The Board notes that he stated that appellant's complaints regarding the diagnosed cervical condition developed some six weeks after the January 31, 2011 employment incident. However Dr. Varma offered no further explanation as to how the employment incident would have caused her cervical condition. The Board also notes that radiology reports were received from Dr. La Roca Viera and Dr. Greenberg, but neither physician offered any discussion of causal relationship.

As appellant did not submit medical evidence from a physician who explained with medical rationale how the diagnosed conditions were causally related to the employment incident, she did not meet her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a medical condition caused by her employment.

¹⁰ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 24, 2011 is affirmed.

Issued: June 14, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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