

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARLEEN BAMBERG and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, New York, NY,

*Docket No. 01-1848; Submitted on the Record;
Issued March 26, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant established that she sustained an injury to her left shoulder and arm on March 22, 2001 in the performance of duty.

On March 27, 2001 appellant, then a 56-year-old management assistant, filed a notice of traumatic injury (Form CA-1) alleging that she injured her left arm and shoulder when she was struck by elevator doors. Appellant indicated that she was first examined by Dr. Marjet Cordon, a Board-certified internist, on March 22, 2001 and notified her supervisor on March 27, 2001.

By letter dated April 9, 2001, the Office of Workers' Compensation Programs advised appellant and the employing establish that the information submitted was insufficient to establish that appellant sustained an injury as alleged. Appellant was advised to submit additional factual and medical evidence in support of her claim. The Office provided a detailed list of evidence needed and questions to be followed. The Office allotted 30 days for the requested evidence to be submitted. No response was received within the allotted time.

By decision dated May 10, 2001, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant sustained the alleged injury on March 22, 2001 as required by the Federal Employees' Compensation Act.¹ The Office found that the factual and medical evidence was insufficient to establish that appellant experienced the claimed injury as alleged.

The Board finds that appellant has failed to establish that she sustained an injury on March 22, 2001 in the performance of duty causally related to factors of her federal employment.

An employee seeking benefits under the Act 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

¹ 5 U.S.C. §§ 8101-8193.

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.”² 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.³

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.⁴ In some traumatic injury cases, this component can be established by an employee’s uncontroverted statement on the Form CA-1.⁵

An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee’s statement must be consistent with the surrounding facts and circumstances and her subsequent course of action.⁶ A consistent history of the injury as reported on medical reports, to the claimant’s supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁷

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.⁸

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. The weight of medical evidence is determined by its reliability, its probative

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁷ *Id.* at 255-56.

⁸ *See Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹

In this case, the Office has not accepted that the elevator incident occurred as alleged on March 22, 2001. However, there is no evidence disputing that appellant was struck by the elevator doors on March 22, 2001. Therefore, the Board finds that the record is sufficient to establish that the March 22, 2001 incident occurred as alleged. An employee's statement regarding the occurrence of an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁰ The evidence is not sufficient to refute appellant's statement that the work incident occurred on March 22, 2001.

The deficiency in the claim is with the medical evidence. The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history.¹¹ Appellant did not submit any medical evidence to establish that her shoulder injury was sustained in the performance of duty causally related to factors of her federal employment-related duties. At the time the Office issued its May 10, 2001 decision denying appellant's claim, the Office had not received any medical evidence. The Office therefore properly denied appellant's claim.¹²

⁹ *James Mack*, 43 ECAB 321 (1991).

¹⁰ *Thelma Rogers*, 42 ECAB 866 (1991).

¹¹ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

¹² The Board notes that appellant submitted additional evidence four days after her May 10, 2001 decision was issued and at no time requested reconsideration before the Office to have such evidence reviewed. The Board also notes that it has no authority to review new evidence as the Board cannot review any new or additional evidence not before the Office at the time the Office rendered its final decision. *See* 29 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the New York City, New York district office with a formal written request for reconsideration.

The May 10, 2001 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Dated, Washington, DC
March 26, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member