

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN A. FULLER and DEPARTMENT OF DEFENSE,
DEFENSE FINANCE & ACCOUNTING SERVICE, Indianapolis, IN

*Docket No. 03-2070; Submitted on the Record;
Issued October 29, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant establish that she sustained an injury in the performance of duty on May 14, 2003.

On May 14, 2003 appellant, then a 42-year-old supervisory claims examiner, filed a traumatic injury claim alleging that she sustained injuries to her left shoulder, left arm and neck while in the performance of duty on that date. Appellant stated that, while standing in a conference room doorway talking with two coworkers, a third coworker, Johnny Wade, bumped into her left side and knocked her off balance. Appellant stopped work on May 14, 2003 and returned to work on May 16, 2003.

A witness, Glenda F. Kelly, stated that she and appellant were standing near the conference room doorway when Mr. Wade began to sneeze. When he sneezed a second time, Mr. Wade reportedly covered his nose and mouth and rushed out the room. Ms. Kelly stated that when she looked again toward the door she saw appellant coming back in.

Another witness, Erin Cooke, who along with Ms. Kelly was engaged in conversation with appellant at the time of the alleged incident, stated that she did not see that Mr. Wade made contact with appellant when he walked past her. Ms. Cooke also noted that appellant was speaking when Mr. Wade passed the group and appellant never stopped speaking or changed her pattern of speech when he went by, as one might expect if a person was bumped while speaking.

Mr. Wade provided a June 2, 2003 statement, wherein he recalled that on the morning of May 14, 2003 he was in the conference room and, as he went to exit through the door to sneeze, he noticed that appellant was partially blocking the door. Mr. Wade stated that he turned partially sideways to squeeze past appellant and he did not "recall any physical contact."

Appellant initially sought treatment at the employing establishment clinic and, beginning on May 16, 2003, received treatment from Dr. James J. Kluzinski, a Board-certified family

practitioner, who diagnosed a cervical strain. He excused appellant from work for the period May 16 to 23, 2003. In a June 9, 2003 attending physician's report (Form CA-20), Dr. Kluzinski diagnosed trapezius and cervical spine strain and noted that appellant reported that a coworker bumped into her. He checked the box "yes" in response to the question of whether he believed appellant's condition was caused or aggravated by an employment activity and indicated that appellant could resume her regular work effective May 24, 2003.

In a decision dated June 25, 2003, the Office of Workers' Compensation Programs denied appellant's claim as the evidence of record was insufficient to establish that she sustained an injury as alleged.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on May 14, 2003.

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 in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.¹ The second component is whether the employment incident caused a personal injury.² Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.³

In this case, appellant has not submitted sufficient factual information to establish that she was injured in the course of her federal employment on May 14, 2003. Appellant alleged that she was standing in a doorway when Mr. Wade bumped into her and knocked her off balance. However, Mr. Wade indicated that he turned sideways to squeeze past appellant and did not "recall any physical contact." Additionally, neither Ms. Kelly nor Ms. Cooke was able to corroborate appellant's account of the May 14, 2003 incident. According to Ms. Kelly, Mr. Wade rushed out the room and when she looked again toward the door she saw appellant coming back in. Ms. Kelly did not state that Mr. Wade and appellant made contact. Additionally, Ms. Cooke stated that she did not see that Mr. Wade made contact with appellant when he walked past her. As neither Mr. Wade, Ms. Kelly nor Ms. Cooke corroborated appellant's allegation that Mr. Wade bumped her as he exited the conference room, the Board

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *John J. Carlone*, 41 ECAB 354 (1989).

³ *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

finds that the evidence is insufficient to establish that the May 14, 2003 incident occurred as alleged. Accordingly, appellant has not met her burden of proof.⁴

The June 25, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 29, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁴ After the issuance of the Office's June 25, 2003 decision, appellant submitted additional evidence. The Board may not consider new evidence for the first time on appeal. 5 U.S.C. § 501(c)(3).