United States Department of Labor
Employees' Compensation Appeals Board

JERILYNN N. FUJITANI, Appellant	)	
and	)	**Docket No. 04-963**
	)	**Issued: July 13, 2004**
DEPARTMENT OF THE NAVY, PEARL HARBOR NAVAL SHIPYARD, Pearl Harbor, HI, Employer	)	

Appearances:
Jerilynn N. Fujitani, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 1, 2004 appellant filed a timely appeal of the February 11, 2004 merit decision of the Office of Workers' Compensation Programs, which denied appellant's traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on March 24, 2003.

FACTUAL HISTORY

On April 11, 2003 appellant, then a 52-year-old physical science technician, filed a traumatic injury claim alleging that she injured her neck while in the performance of duty on March 24, 2003. Appellant stated that she was lifting a 20-pound item out of a chest high lead cave when she felt a pull on the back portion of her neck.

Dr. Franklin I. Izuta, Board-certified in preventative medicine, examined appellant on April 16, 2003. He reported that appellant sustained an injury to her neck on March 24, 2003 when she was lifting a piece of equipment weighing approximately 20 pounds out of a lead cave. Dr. Izuta stated that appellant was experiencing headaches, pain at the base of the neck and a burning sensation over the right clavicle. On physical examination, Dr. Izuta reported that cervical segmental dysfunction was present at the cervicothoracic junction. He also noted that range of motion of the neck was good except that left rotation was mildly restricted. Dr. Izuta further indicated that there was tenderness to palpation at the cervicothoracic junction and the first rib on the left was elevated. Additionally, scalenes were noted to be tender bilaterally. Dr. Izuta diagnosed cervical and thoracic segmental dysfunction. He recommended physical therapy and advised that appellant should limit her lifting to 10 pounds and avoid any lifting above chest height. Dr. Izuta continued to treat appellant on a regular basis over the next few months and on June 23, 2003 he discharged appellant from his care, noting that she was stable with no impairment from the March 24, 2003 injury.

On January 8, 2004 the Office advised appellant of the need for additional factual and medical evidence. The Office noted, among other things, that no clear diagnosis of any condition resulting from the alleged injury had been provided. With respect to Dr. Izuta's diagnoses of cervical and thoracic segmental dysfunction, the Office noted that ICD-9 diagnosis codes had not been provided and therefore the doctor's diagnoses were unclear. The Office afforded appellant 30 days within which to submit the requested factual and medical information.

Appellant submitted a January 22, 2004 statement explaining the circumstances of her March 24, 2003 injury and the delay in filing her claim and in receiving medical treatment. The Office also received additional copies of some of Dr. Izuta's treatment records as well as appellant's physical therapy records.

On February 9, 2004 the Office referred the case to its medical adviser for clarification of the diagnoses of cervical and thoracic segmental dysfunction. The Office medical adviser responded that it was not clear what the treating physician meant by these diagnoses. She suggested asking Dr. Izuta to explain his diagnoses. Alternatively, the Office medical adviser recommended considering a cervical strain or referring appellant for a second opinion evaluation.

In a decision dated February 11, 2004, the Office denied appellant's claim on the basis that she failed to establish that she sustained an injury in the performance of duty. The Office explained that it was unclear what Dr. Izuta meant by his diagnoses and there was no comprehensive physician's report that included an employment-related diagnosis with corresponding ICD-9 diagnosis codes.

LEGAL PRECEDENT

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]

ANALYSIS

The Office found that appellant experienced the March 24, 2003 employment incident. However, the Office denied the claim because of appellant's apparent failure to submit medical evidence diagnosing a condition arising from the March 24, 2003 employment incident. The Office medical adviser was unsure of the meaning of Dr. Izuta's diagnoses of cervical and thoracic segmental dysfunction and she recommended obtaining clarification from the doctor. Alternatively, she advised the Office to consider acceptance of cervical strain or a referral for a second opinion evaluation. The Office, however, denied appellant's claim. Although Dr. Izuta did not identify specific ICD-9 diagnosis codes, his diagnoses of cervical and thoracic segmental dysfunction appear to be alternative means of describing a subluxation.[4] The doctor's reports, however, are not fully rationalized and therefore are insufficient to discharge appellant's burden of proof.

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[5] Although Dr. Izuta's reports are insufficient to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that her claimed cervical and thoracic condition is causally related to her March 24, 2003 employment injury, these reports are sufficient to require further development of the case record by the Office.[6]

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate specialist for an evaluation and a rationalized medical opinion regarding the cause and extent of appellant's claimed cervical and thoracic condition. After such

[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.*

[4] *See* ICD-9-CM, code 739.1 and 739.2 (2004).

[5] *William J. Cantrell*, 34 ECAB 1223 (1983).

[6] *See John J. Carlone*, *supra* note 2; *Horace Langhorne*, 29 ECAB 820 (1978). *See also Mae Z. Hackett*, 34 ECAB 1421 (1983) (once the Office begins medical development, it has the responsibility to obtain an evaluation which will resolve the issue involved in the case).

development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2004 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision.

Issued: July 13, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member