United States Department of Labor
Employees' Compensation Appeals Board

SHARON SIZEMORE, Appellant	)	
and	)	**Docket No. 04-1362**
	)	**Issued: September 8, 2004**
DEPARTMENT OF TRANSPORTATION, JAMES M. COX DAYTON INTERNATIONAL AIRPORT, Vandalia, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 26, 2004 appellant, through her attorney, filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated February 4, 2004, finding that she failed to establish an injury while in the performance of duty. Pursuant to 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 has established that she sustained an injury while in the performance of duty.

FACTUAL HISTORY

On November 24, 2003 appellant, then a 47-year-old transportation security screener, filed a traumatic injury claim alleging that on February 10, 2003 she hurt her back while lifting bags weighing 50 to over 100 pounds. She did not stop work and, within a week of her alleged injury, she experienced bleeding from her kidney. Appellant submitted a November 7, 2003

Federal Medical Leave Act form report from Dr. Theodros Yohannes, a urologist, who indicated that she had anemia of an unknown origin and that she could perform light-duty work.

The employing establishment controverted appellant's claim on the grounds that the alleged injury occurred nine months prior and there was no documentation to support the claim.

By letter dated December 30, 2003, the Office advised appellant that the evidence submitted was insufficient to establish her claim because there was no evidence that she actually experienced the incident or employment factor alleged to have caused her injury, no diagnosis of any condition resulting from the alleged February 10, 2003 injury and no physician's opinion addressing how her alleged injury resulted in the diagnosed condition had been provided. The Office further advised her about the type of factual and medical evidence she needed to submit to establish her claim.

On January 5, 2004 appellant noted that she hurt her back while lifting bags at the "CTX" machine and that on the date of the alleged injury and for many days thereafter, she told friends that she hurt her back while lifting. She noted that a diagnosis for her condition had not yet been determined. Appellant sought medical treatment to stop her kidney from bleeding. Appellant explained why she did not stop work after the alleged injury and why she did not immediately report it. In describing the alleged injury, she could not say whether lifting one day or lifting over a period of time contributed to her back and kidney conditions. She stated that for five months of continuous lifting an average of 50 pounds everyday, sometimes six and seven days a week, she had no problem, no backache, no injury and no bleeding kidney. Appellant, however, stated that lifting 75 to 100 pounds on the date of the alleged injury caused her back to hurt and within days of this incident her kidney began to bleed. She noted a history of having a bleeding kidney 15 years prior.

In a January 12, 2004 medical report, Dr. Anne K. Nestor, a Board-certified family practitioner, noted that appellant had a long history of hematuria, which was first addressed on February 28, 2003. She provided a history that appellant first presented with gross hematuria for several days after lifting several 100-pound objects at work. Appellant's history of hematuria occurred 10 to 15 years prior when she was pregnant with her children and for which she had an extensive workup. At the time of examination, appellant was treated for a urinary tract infection and Dr. Nestor referred her to Dr. Yohannes, a urologist. Dr. Nestor examined appellant again on August 21 and 28 and September 8, 2003 and appellant complained of intermittent hematuria. Appellant was also seen for fatigue with sleep deprivation and pernicious anemia. Dr. Nestor opined that appellant's job stress did not cause her condition but, that it was "probably" aggravated by lifting which was required by her job. She discussed this history at length with appellant and was unable to find the source of her hematuria. Dr. Nestor concluded that appellant's ability to lift should be addressed by Dr. Yohannes since he had followed her hematuria condition more closely.

In a January 23, 2004 report, Dr. Yohannes stated that he had treated appellant for hematuria, that she was previously treated for this condition 15 years prior and that she had no further incidents of gross hermaturia until her injury at work. He listed the medical tests that appellant had undergone. Dr. Yohannes stated that the cause of appellant's gross hematuria was of an unknown origin and that she had been referred to a nephrologist for further workup. He

concluded that a direct correlation between appellant's injury and her hematuria could not be ascertained, nor could it be ruled out. Dr. Yohannes stated that he would continue to treat appellant for an unknown duration until an absolute diagnosis was made.

By decision dated February 4, 2004, the Office found that the evidence of record was insufficient to establish that appellant sustained a medical condition causally related to "the accepted event" of lifting bags, which weighed 50 to 100 pounds.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 an 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of 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 or exposure, which is alleged to have occurred.[4] In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and the

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

[4] *See also*, Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

[5] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) ("traumatic injury" and "occupational disease" defined, respectively).

identified factors.[6] The belief of the claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[7]

ANALYSIS

In this case, it is undisputed that appellant was lifting bags, which weighed between 50 and 100 pounds while working at the employing establishment on February 10, 2003. The Board finds that she has established the employment incident on that date. However, the Board finds the medical evidence of record is insufficient to establish that this incident caused an injury.

Appellant submitted a form report in which Dr. Yohannes stated that she experienced anemia of an unknown origin. Similarly, his January 23, 2004 report provided that appellant had gross hematuria of unknown origin. The reports of Dr. Yohannes are insufficient to satisfy appellant's burden as they do not relate the diagnosed kidney condition to the February 10, 2003 employment incident. He noted that a direct correlation to appellant's work could not be made. For this reason, the Board finds that the medical opinion of Dr. Yohannes is of diminished probative value of the issue of causal relationship.

Dr. Nestor's opinion that appellant's hematuria was "probably" aggravated by the lifting requirements of her job is speculative and equivocal in nature and, therefore, of diminished probative value.[8] Further, she noted that it was frustrating that the source of appellant's hematuria condition had not been determined. The reports of Dr. Nestor are insufficient to meet appellant's burden of proof as she failed to provide a rationalized medical or causal relationship.

Based on the foregoing, appellant has failed to submit sufficient rationalized medical evidence to establish that she sustained an injury caused by the February 10, 2003 employment incident.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury while in the performance of duty.

[6] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[7] *Charles E. Evans*, 48 ECAB 692 (1997).

[8] *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member