

employing establishment until July 21, 2003. Appellant did not stop work at the time of the claimed injury.

By letter dated July 29, 2003, the Office informed appellant of the type of medical evidence needed to support her claim and advised her that she had 30 days to submit such evidence. The Office specifically asked that appellant provide a “physician’s opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.” The Office noted that the explanation by a physician was “crucial” to her claim.

By decision dated September 9, 2003, the Office denied appellant’s claim on the grounds that there was insufficient evidence to establish fact of injury. The Office explained that, while the evidence of record supported that the claimed event occurred on October 24, 2001, there was no medical evidence to support her claim that she sustained a medical condition causally related to that event.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and, that any disability or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

In order to determine whether an employee actually sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether “fact of injury” has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally in the form of medical evidence to establish that the employment incident caused the personal injury.³

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.⁴ 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. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by

¹ 5 U.S.C. §§ 8101-8193.

² *Gabe Brooks*, 51 ECAB 184 (1999).

³ *Gloria J. McPherson*, 51 ECAB 441 (2000).

⁴ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵ The Office cannot find fact of injury if the evidence fails to establish that the employee sustained an “injury” within the meaning of the Act.

ANALYSIS

Appellant alleged that she sustained injuries to the left side of her head, neck and left ear on October 24, 2001 when a falling pole hit her on the side of the neck and head. It is not disputed that the claimed incident involving the falling of the pole occurred as alleged. However, the claim was denied because appellant did not submit medical evidence supporting that this incident on October 24, 2001 caused or aggravated a specific injury.

On July 29, 2003 the Office advised appellant regarding the kind of medical evidence needed to support her claim and noted that it would keep the record open for 30 days to provide her the opportunity to submit such evidence. In this letter, the Office noted that it was “crucial” to her claim that she submit medical evidence explaining how the reported work incident caused or aggravated the claimed injury. The record reveals that appellant did not submit any evidence in support of her claim within the 30-day period. As appellant did not submit any medical evidence supporting that the October 24, 2001 work incident caused or aggravated an injury, she has not satisfied the second component of fact of injury, noted above. Consequently, the Board finds that appellant did not meet her burden of proof in establishing her claim for a traumatic injury.⁶

CONCLUSION

The Board finds appellant has not met her burden of proof to establish that she sustained an injury on October 24, 2001 causally related to her employment.

⁵ *Id.*

⁶ The Board notes that, following the Office’s September 9, 2003 decision, appellant submitted new evidence. However, the Board may not consider new evidence on appeal as its review is limited to the evidence of record that was before the Office at the time of its September 9, 2003 final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision by the Office of Workers' Compensation Programs dated September 9, 2003 is affirmed.

Issued: February 1, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member