

condition and the fact that it was caused or aggravated by her employment on January 15, 2001 but delayed in filing her claim because she was waiting for a report from her doctor.

By letter dated December 26, 2001, the Office notified appellant that the information submitted was insufficient to establish her claim and advised her to describe the employment-related activities she believed caused her condition and a medical report providing a diagnosis and reasoned opinion as to the cause of her condition.

In response to the Office's request, appellant submitted a statement dated January 14, 2002 in which she alleged that she was originally injured on September 29, 1999 when an oxygen tank fell on her right foot and that she had been receiving medical treatment due to increasing severe pain and muscle spasms in her right foot and right hip ever since. She further claimed that subsequent "constant exposure to the cold air and poor heating conditions" in her position as "receptionist by the outside door" caused arthritis in her right leg. She stated that she was unable to find a doctor who would accept her case until September or October 2000 and that by August 2001, the pain had increased severely, with spasms from her right foot to her right hip and extreme swelling of her right thigh, which she attributed to pinched nerves.

Appellant submitted x-ray reports of her right hip dated August 20 and November 28, 2001, reflecting "no acute bony abnormality" and "very minimal degenerative changes in the right hip which is similar to changes noted in the left hip."

By decision dated May 23, 2002, the Office denied appellant's claim, finding that the evidence submitted did not establish that she had sustained an injury as alleged.

Appellant submitted an unsigned narrative report dated June 5, 2003 from Dr. Rekha Rao, a treating physician,¹ reflecting that she first examined appellant in October 2000, for complaints of cervical and lumbar pain with radicular features into the right upper and lower extremities; that a February 2001 electromyogram (EMG) of the right upper extremity revealed electrophysiologic evidence of cervical radicular dysfunction at the C7 myotome and evidence of carpal tunnel syndrome; that a September 13, 2001 EMG revealed a mild L5-S1 dysfunction, with no significant appendicular motor axon loss; that clinically appellant's symptoms were suggestive of bursitis versus myositis in the right iliopsoas and hip joint; and that November 28, 2001 x-rays of the right hip revealed minimal degenerative changes of the right hip which are similar to changes noted in the left hip. Dr. Rao stated that appellant's history of chronic lumbar pain had worsened since her alleged 1999 work-related incident involving the oxygen tank and that she had been unable to work since September 2001 "due to discomfort." Dr. Rao opined that "given the history and clinical course, the likely etiology for [appellant's] symptoms [of cervical and lumbar radiculopathy] is felt to be related to the injury that she sustained at work." She further reported that appellant was limited in bending, prolonged sitting and lifting greater than 5 to 10 pounds, that she could not perform repetitive movements with the right upper extremity and that her disability was permanent. Appellant also submitted physical therapy reports from November 2 to December 19, 2001.

¹ Although Dr. Rao's letterhead reflects that she is Board-certified in the areas of psychiatry and neurology, this information cannot be verified.

Appellant requested a hearing, which was held on February 18, 2004. Appellant testified that she had several work-related injuries since she commenced federal employment on March 22, 1992 including an injury to her right wrist while turning a patient and an injury to her shoulder on February 10, 1998 that required surgery and resulted in appellant's placement in a sedentary job. She alleged that on September 29, 1999 an oxygen tank fell on and injured her right foot; that she began having spasms in her right foot and developed pain in her lower back and swelling in her right thigh as a result of being required by the employing establishment to participate in a disaster drill "just before September 11, 2001." She claimed that "they made [her] stand up in the hallway for two hours and no one told [her] that the drill was over. They just let [her] stand there." Appellant alleged that she missed four months of work beginning September 2001 due to her condition. She opined that she was "quite sure" that her condition resulted from the alleged September 29, 1999 work-related incident because she "never had anything wrong with [her] feet" prior to the incident. The hearing representative left the record open for 30 days for submission of additional evidence.

In an agency response to transcript of proceedings dated March 19, 2004, the employing establishment contested appellant's allegation that a disaster drill occurred at her work location in September 2001. The response documented that appellant sustained an injury to her right foot on September 29, 1999; that x-rays displayed negative findings; and that her foot was wrapped in an ace bandage.

By decision dated April 30, 2004, the Office hearing representative affirmed the Office's May 23, 2002 decision denying appellant's claim, finding that the evidence failed to establish that appellant sustained an injury in the performance of duty.

By letter dated July 2, 2004, appellant requested reconsideration of the April 30, 2004 decision. In support of her request, appellant submitted a "rebuttal letter" dated June 16, 2004 alleging that the drill in which she was required to participate was, in fact, a "mock disaster drill, which occurred approximately the end of August or the beginning of September 2000. No one is for sure."

By letter dated July 19, 2004, the Office asked appellant to clarify whether she was claiming an occupational disease or a traumatic injury and advised her to provide a comprehensive medical report explaining the cause of her alleged condition.

By letter dated July 27, 2004, the employing establishment stated that there was no record of a traumatic injury claim filed in 2000 and no record of a mock disaster drill having been held in appellant's work unit in late August or early September 2000; that appellant was not absent from duty for a continuous period of four months; and that there were no records that appellant was examined or treated for hip, leg or back conditions during late August or early September 2000.

In a letter dated August 4, 2004, Dr. Rao opined that appellant's "neurological symptoms of cervicular and lumbar radiculopathy are due to the nature of her job."

By decision dated September 7, 2004, the Office denied appellant's request, finding the evidence insufficient to warrant modification of its April 30, 2004 decision.²

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of her claim, including the fact that an injury was sustained in the performance of duty as alleged⁴ and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition, for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶

An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged, that the injury was sustained while in the performance of duty and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.⁷ An employee has not met this burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁸ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁹ These are the essential elements of each and every compensation

² The Office's September 7, 2004 decision reflects that appellant filed a claim (file number 030247300), which was accepted for contusion of the right foot and is currently under "appeal." There is no evidence in the record documenting this claim.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joseph W. Kripp*, 55 ECAB ____ (Docket No. 03-1814, issued October 3, 2003); *see also Leon Thomas*, 52 ECAB 202, 203 (2001) (when an employee claims that he sustained injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury). *See also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(q) and (ee) (2002) ("occupational disease or illness" and "traumatic injury" defined).

⁵ *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997).

⁶ *Michael R. Shaffer*, 55 ECAB ____ (Docket No. 04-233, issued March 12, 2004). *See also Solomon Polen*, 51 ECAB 341, 343 (2000).

⁷ *See Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *see also Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁸ *Juanita Pitts*, 56 ECAB ____ (Docket No. 04-1527, issued October 28, 2004); *see also Louise F. Garnett*, 47 ECAB 639, 643-44 (1996).

⁹ *See Constance G. Patterson*, 41 ECAB 206 (1989).

claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.¹⁰

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. To be of probative value, 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.¹¹ Additionally, the Board has consistently held that unsigned medical reports are of no probative value¹² and that any medical evidence upon which the Office relies to resolve an issue must be in writing and signed by a qualified physician.¹³

An award of compensation may not be based on appellant's belief of causal relationship. Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹⁴ Furthermore, the Board has held that a diagnosis of "pain" does not constitute the basis for the payment of compensation.¹⁵

ANALYSIS

The first component to be established is that appellant actually experienced the employment incidents which are alleged to have occurred. 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.¹⁶ 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. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether she has established a *prima facie* case.

¹⁰ See *Kathryn A. Tuel-Gillem*, 52 ECAB 451, 452 (2001).

¹¹ *Leslie C. Moore*, 52 ECAB 132, 134 (2000); see also *Ern Reynolds*, 45 ECAB 690, 695 (1994).

¹² *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹³ *James A. Long*, 40 ECAB 538, 541 (1989).

¹⁴ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); see also *Dennis M. Mascarenas*, *supra* note 5 at 218.

¹⁵ See *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

¹⁶ *Juanita Pitts*, 56 ECAB ____ (Docket No. 04-1527, issued October 28, 2004).

The Board finds that appellant has failed to establish that the alleged events occurred in the time, place and in the manner described. Appellant's actions and inconsistencies in the record cast serious doubt upon the occurrence of the incidents as described by appellant. According to the Office hearing representative's April 30, 2004 decision, appellant filed a traumatic injury claim (Form CA-1) on October 1, 1999 reflecting that an oxygen tank fell on her foot on September 29, 1999. Although the employing establishment stated that she was treated and her foot was wrapped in an ace bandage, appellant provided no medical evidence documenting that she sustained a resulting injury. Appellant alleged that she developed arthritis due to constant exposure to the cold air and poor heating condition in her position as a receptionist by the outside door. But she provided no corroborating evidence that she was subject to these conditions, nor did her physician provide a diagnosis of arthritis. Appellant also alleged that she was required to stand for two hours during a mock disaster drill. However, her allegations were refuted by the employing establishment. Moreover, the record reflects that appellant failed to report the alleged incident to her supervisor; was unable to provide any evidence, such as witness statements, to support her claim; and could not remember the year the disaster drill allegedly occurred. Appellant alleged that she missed work for four months following the mock disaster drill; however, the employing establishment provided records reflecting that she did not stop working for four months continuously and stated that she was not examined by the employing establishment's health unit for hip, leg and back conditions at the time she alleged the drill occurred. The record contains no contemporaneous factual evidence indicating that the claimed incidents occurred as alleged. The Board finds that appellant has failed to present sufficient evidence to establish that she was injured at the time, place and in the manner alleged.

Appellant has also failed to establish the required causal relationship between her diagnosed condition and factors of her federal employment. The medical evidence of record consists of two reports by appellant's treating physician, Dr. Rao, whose unsigned January 5, 2003 report, stated that the likely etiology for appellant's symptoms of cervical and lumbar radicular was felt to be related to the injury she sustained at work. This report lacks probative value in that it was unsigned. Dr. Rao later opined that appellant's "neurological symptoms of cervical and lumbar radiculopathy are due to the nature of her job." However, she did not discuss the cause of the diagnosed conditions in terms of specific work factors, namely being required to stand for two hours during a drill and being subjected to cold weather conditions during her receptionist duties, nor did she explain how an injury to appellant's foot could result in her diagnosed cervical and lumbar conditions. Because she failed to provide a rationalized opinion as to the cause of appellant's condition, her opinion is of little probative value.

Appellant asserted that she was "quite sure" that her condition resulted from the accepted September 29, 1999 work-related incident because she had never had anything wrong with her feet prior to that date. However, neither the occurrence of the condition nor appellant's belief that her diagnosed condition was caused or aggravated by her employment is sufficient to establish a causal relationship. The fact that appellant did not have foot problems prior to obtaining federal employment is not probative evidence that her job caused the conditions

diagnosed by Dr. Rao.¹⁷ There is no medical evidence of record that explains the physiological process whereby appellant's cervical and lumbar pain with radicular features into the right upper and lower extremities, carpal tunnel syndrome, or bursitis in the right iliopsoas and hip joint are causally related to appellant's September 29, 1999 work-related foot injury or any other condition of employment. Although Dr. Rao stated that appellant had a history of lumbar pain, she omitted any discussion of how this preexisting problem was aggravated by employment factors.

Although the Office advised appellant of the deficiency of the medical evidence on several occasions, thus affording her ample opportunity to provide clarifying and supportive evidence, she failed to submit the rationalized medical evidence necessary to meet her burden of proof. Therefore, the Board finds that the Office properly denied her claim in its April 30 and September 7, 2004 decisions.

CONCLUSION

Appellant has failed to meet her burden of proof that she sustained an injury in the performance of duty.

¹⁷ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (finding that the fact that appellant was asymptomatic before an injury but symptomatic afterward is insufficient to establish a causal relationship absent supporting rationale).

ORDER

IT IS HEREBY ORDERED THAT the September 7 and April 30, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 6, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member