

Appellant indicated that she had faxed the claim to the employing establishment on September 7, 2004.

By letter dated March 16, 2005, the Office requested additional information from appellant, including a physician's report explaining how the claimed event caused or exacerbated her alleged condition.

Appellant did not submit any additional evidence and by decision dated April 19, 2005 the Office denied her claim on the grounds that she had not submitted medical evidence diagnosing a specific condition.

On April 19, 2006 appellant requested reconsideration of the Office's April 19, 2005 decision. With her request, she submitted several medical reports. Included in these were several reports from physicians associated with a local hospital emergency room. In an emergency room report dated August 27, 2004, Dr. Mathurin Malby, an emergency medicine resident, noted that appellant reported having left arm pain "for about a week." In an August 29, 2004 emergency room report, Dr. Kelley L. Robinson, a Board-certified emergency medicine specialist, noted that appellant related that her pain "initially ... started in the wrist and elbow and she was not sure where it was really coming from." He stated that appellant denied trauma and she diagnosed left ulnar neuropathy. In another August 29, 2004 emergency room report, Dr. Adam Rettig, a resident under Dr. Robinson's supervision, noted treating appellant for left arm pain and advised that she had "no history of any trauma whatsoever." He diagnosed left ulnar neuropathy. In an August 30, 2004 radiology report, Dr. Dong Ki Cho, a radiologist, reported that left elbow x-rays revealed no evidence of fracture, dislocation or bony destructive disease. In a September 1, 2004 report, Dr. Syed Zaheer Hasan, a neurologist, advised that an electromyogram (EMG), performed due to appellant's complaints of left arm pain, revealed no evidence of radiculopathy.

In a report dated September 15, 2004, Dr. Bradley J. Morse, a Board-certified orthopedic surgeon, noted that appellant "states she has about a two-week history of left elbow pain. She is not sure whether she bumped up against something or hit it." Dr. Morse recorded an impression of "acute ulnar neuropathy left elbow secondary to probable trauma without evidence for chronic findings."

Appellant also submitted a narrative medical report from Dr. Martin Skie, a Board-certified orthopedic surgeon, dated November 17, 2005. Dr. Skie stated that appellant "sustained a contusion to the posterior aspect of her left elbow on or about October 29, 2004." The report noted that appellant returned to work but experienced worsening symptoms after using her left arm while practicing with her firearm, "particularly after a jamming incident." Dr. Skie diagnosed cubital tunnel syndrome and opined that "[c]ubital tunnel syndrome or irritation of the ulnar nerve certainly can result from a direct blow to the posterior aspect of the elbow. And along those lines I do believe that her symptoms are directly related to that injury."

By letter dated June 1, 2006, the Office informed appellant that the additional medical evidence she submitted was sufficient to warrant reconsideration on the merits. The Office also allowed both appellant and the employing establishment additional time to submit evidence.

In a decision dated July 10, 2006, the Office denied appellant's claim, finding that, although the record supported that the event occurred, the medical evidence did not support causal relationship between the accepted injury and appellant's employment. The Office stated that appellant had not submitted well-rationalized medical opinion evidence that established a causal link between her condition and her employment. Specifically, the Office indicated that the medical reports contemporaneous with appellant's injury did not include a complete history of the claimed injury consistent with her allegations.

On July 14, 2006 appellant requested a hearing.

By decision dated August 3, 2006, the Office declined appellant's request for an oral hearing, stating that she was not entitled to an oral hearing as she had already requested reconsideration on the same issue. The Office further considered the matter and also denied the hearing request on the grounds that the matter could be equally well addressed by submitting new evidence to the Office as part of the reconsideration process.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that he or she sustained an injury while in the performance of duty.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 which is alleged to have occurred. An employee has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged by a preponderance of the reliable, probative and substantial evidence.⁴ An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. 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 he or she has established a *prima facie* case.⁵ However, an employee's statement alleging that an injury occurred at a given

¹ Appellant has not appealed the Office's denial of an oral hearing to the Board. Her attorney stated that she inadvertently requested an oral hearing when she intended to appeal to the Board.

² 5 U.S.C. §§ 8101-8193.

³ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁴ *Charles B. Ward*, 38 ECAB 667 (1987).

⁵ *Merton J. Sills*, 39 ECAB 572, 575 (1988). *See also Paul Foster*, 56 ECAB ____ (Docket No. 04-1943, issued December 21, 2004).

time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁶

The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁷ As part of this burden, the claimant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.⁸ 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.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant¹⁰ and must be one of reasonable medical certainty¹¹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS

The Board finds that appellant did not meet her burden of proof in establishing that the claimed employment incident occurred as alleged. The Office's July 10, 2006 decision denied the claim because the medical evidence did not establish that the August 26, 2004 incident caused the diagnosed condition. However, the Board finds that the evidence does not establish that the claimed August 26, 2004 incident took place as alleged.

Although appellant stated that she injured her elbow on August 26, 2004 while bending down to retrieve some papers, the weight of the factual evidence casts doubt on the occurrence of this incident. Dr. Malby's August 27, 2004 report stated that appellant reported ongoing left arm pain for about a week. No August 26, 2004 incident was noted. Both Dr. Rettig's August 29, 2004 report and Dr. Robinson's August 29, 2004 report stated that appellant did not present a history of trauma. Dr. Rettig's report states that there was "no history of any trauma whatsoever" and Dr. Robinson's report notes that appellant was not sure where the pain was coming from, but that she "denies any trauma." Thus, each of these contemporaneous medical reports make no mention of any traumatic incident on August 26, 2004. While Dr. Skie's November 11, 2005 report does mention a left elbow contusion in his history, he states that this occurred on October 29, 2004. He made no mention of any August 26, 2004 employment incident. Furthermore, the employing establishment did not receive notice of the claimed injury until January 25, 2005, about five months after the claimed August 26, 2004 incident. Although

⁶ *Thelma S. Buffington*, 34 ECAB 104 (1982).

⁷ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁸ *Joseph T. Gulla*, 36 ECAB 516 (1985).

⁹ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹⁰ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

¹² *Judy C. Rogers*, 54 ECAB 693 (2003).

appellant asserts that she faxed a copy of her claim to the employing establishment on September 7, 2004, there is no evidence in the record substantiating this assertion.

As noted above, the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. Such circumstances as late notification of injury and lack of confirmation of injury, may cast doubt on an employee's statements in determining whether she has established a *prima facie* case. Here, the evidence reflects that the employing establishment did not receive notice of the claimed injury until January 25, 2005. Medical reports most contemporaneous with the claimed August 26, 2004 incident do not mention any workplace trauma on that date nor do they mention any trauma associated with the claimed condition. Accordingly, appellant has not established that the incident had occurred as alleged as there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. The record contains no contemporaneous factual evidence indicating that the claimed incidents occurred as alleged.

The Board further notes that, in any event, the medical evidence does not establish causal relationship between appellant's employment and a diagnosed medical condition. While some of the medical evidence supports that appellant has left ulnar neuropathy, this medical evidence does not establish that an employment factor caused this condition. Only one medical report submitted by appellant, Dr. Skie's November 17, 2005 report, provided any support for causal relationship. However, as noted above, Dr. Skie provided a history of injury inconsistent with that provided by appellant and his support for causal relationship was couched in speculative terms as he noted that cubital tunnel syndrome "certainly can result from a direct blow" to the back of the elbow. As such, his report is of little probative value.¹³ Accordingly, the Board finds that appellant's medical evidence fails to provide well-reasoned support for causal relationship.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained an injury as alleged in the performance of duty.

¹³ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 10, 2006 is affirmed, as modified.

Issued: December 28, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board