

**United States Department of Labor
Employees' Compensation Appeals Board**

ZENAIDA GARCIA, Appellant)
and) Docket No. 05-1809
DEPARTMENT OF HOMELAND SECURITY,) Issued: January 9, 2006
CUSTOMS & BORDER PROTECTION,)
Brownsville, TX, Employer)

)

Appearances:
Zenaida Garcia, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 26, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated May 16, 2005 finding that she had not established an injury on April 14, 2004. 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 sustained an injury in the performance of duty on April 14, 2004.

FACTUAL HISTORY

On April 16, 2004 appellant, then a 39-year-old customs and border protection officer, filed a traumatic injury claim alleging that on April 14, 2004 she fell, injuring her knees, wrists, elbows and shoulders.

In a duty status report dated May 3, 2004, Dr. Mike Sweeney¹ stated that appellant sustained a work-related lateral epicondylitis and shoulder and wrist pain on April 14, 2004 and released appellant to return to work effective that day. In a report dated May 19, 2004, Dr. Sweeney stated that appellant tried light-duty work but that this aggravated her extensive lateral epicondylitis. He placed her off work for two weeks. In a duty status report dated May 19, 2004, Dr. Sweeney noted work-related lateral epicondylitis and shoulder and wrist pain with a date of injury of April 14, 2004.

On June 2, 2004 Dr. Sweeney treated appellant for lateral epicondylitis sustained on April 14, 2004 and released her to return to work. In a duty status report dated June 2, 2004, he stated that appellant's epicondylitis, wrist sprain and shoulder conditions were causally related to employment and released her to full duty effective June 7, 2004. On June 16, 2004 Dr. Sweeney noted improvement of appellant's elbow, shoulder and wrist conditions and prescribed therapy and a wrist brace. Appellant remained in a full-duty status. In a duty status report dated June 16, 2004, Dr. Sweeney repeated that appellant could work. The record includes physical therapy reports from May 10 to July 1, 2004.

On April 8, 2005 the Office advised appellant of the type of medical evidence needed to establish her claim.

In a report dated May 3, 2004, Dr. Sweeney stated that appellant tripped over a telephone cord at work on April 14, 2004 and injured her right arm. He diagnosed right lateral epicondylitis, right wrist sprain, right shoulder impingement and a right shoulder acromioclavicular joint injury. Dr. Sweeney noted findings on physical and x-ray examination. In a report dated April 4, 2005, Dr. R.N. Lakshmikanth, appellant's treating Board-certified orthopedic surgeon, stated that he treated her right ankle and that she complained of pain; he released her to return to full duty on that day.

By decision dated May 16, 2005, the Office denied appellant's claim on the grounds that she did not establish fact of injury. The Office found that appellant had established the occurrence of the claimed April 14, 2004 employment incident but failed to establish a diagnosed condition resulting from the employment incident.

LEGAL PRECEDENT

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.² The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

¹ Dr. Sweeney's credentials are not known.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.³ 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. 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁴

An award of compensation may not be based on surmise, conjecture, or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.⁵ To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.⁶

ANALYSIS

The evidence establishes the first component of fact of injury, that appellant tripped over a cord on April 14, 2004. However, the medical evidence is insufficient to establish the second component of fact of injury; that the April 14, 2004 employment incident caused a personal injury. Dr. Sweeney's narrative report dated May 3, 2004 noted appellant's right lateral epicondylitis, right wrist pain, right shoulder impingement and a right shoulder acromioclavicular joint injury, but did not provide any medical rationale explaining how the employment incident caused or aggravated the diagnosed conditions.⁷ In other reports, such as his May 19, June 2 and 16, 2004 reports, he diagnosed lateral epicondylitis, wrist and shoulder sprain but provided no rationalized medical opinion establishing a causal relationship with employment.⁸ In duty status reports dated May 3, 19 and June 2, 2004, Dr. Sweeney wrote "yes" on a form report with respect to the question of whether the diagnosed condition was "due to injury." However, when a physician's opinion supporting causal relationship consists only of

³ See 20 C.F.R. § 10.110(a); *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002).

⁴ *Joan F. Burke*, 54 ECAB ____ (Docket No. 01-39, issued February 14, 2003).

⁵ *William S. Wright*, 45 ECAB 498, 503 (1993).

⁶ *Calvin E. King*, 51 ECAB 394, 401 (2000).

⁷ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁸ *Id.*

indicating “yes” to a form question, that opinion has little probative value and is insufficient to establish a causal relationship.⁹

Dr. Lakshmikanth, appellant’s attending orthopedic surgeon, submitted a report dated April 4, 2005 in which he stated that he had treated appellant for a painful right ankle condition. However, he did not indicate that appellant’s right ankle condition was causally related to employment.¹⁰

The record also includes reports of physical therapy from May 10 to July 1, 2004. The Board has long held that a physical therapist is not a physician for the purposes of the Act, therefore the physical therapy notes do not constitute medical evidence and thus appellant is unable to satisfy her burden of proof on causation through the submission of these physical therapy notes.¹¹

There is no medical evidence before the Board which explains the medical reasons by which the February 14, 2004 incident caused or aggravated a specific diagnosed condition. Either the medical evidence submitted does not specifically address causal relationship or the reports provide no medical reasoning in support of causal relationship. Because there is no medical evidence explaining how the employment incident caused or aggravated a diagnosed condition, appellant has not met her burden of proof in establishing her claim.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury in the performance of her federal duties.

⁹ See *Gary J. Watling*, 52 ECAB 278 (2000).

¹⁰ *Jimmie H. Duckett*, see *supra* note 7.

¹¹ See *Jennifer L. Sharp*, 48 ECAB 209 (1996).

ORDER

IT IS HEREBY ORDERED THAT the May 16, 2005 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 9, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board