United States Department of Labor
Employees' Compensation Appeals Board

TAMMY S. BRYSON, Appellant	)	
and	)	**Docket No. 06-436**
	)	**Issued: June 6, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Seneca, SC, Employer	)	

Appearances:
Tammy S. Bryson, 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 December 19, 2005 appellant filed a timely appeal of a November 22, 2005 decision of the Office of Workers' Compensation Programs which denied her request for an oral hearing, and decisions dated February 23 and July 8, 2005 which found that she did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained an injury in the performance of duty on November 3, 2004; and (2) whether the Office properly denied appellant's request for an oral hearing.

FACTUAL HISTORY

On November 4, 2004 appellant, then a 43-year-old rural mail carrier, filed a traumatic injury claim alleging that on November 3, 2004 she became light-headed, had stomach cramps, vomited, with burning in the throat and headaches after being exposed to fumes from a leaking parcel while in the performance of duty. Appellant stopped work on November 3, 2004 and returned on November 15, 2004.

Appellant submitted a November 3, 3004 emergency room report, in which Dr. Howard M. Leslie, Board-certified in emergency medicine, stated that appellant was exposed to an unknown substance at work. He noted symptoms of nausea, burning in the throat, a metal taste in her mouth and coughing. Dr. Leslie ruled out shortness of breath and chest pain. He diagnosed "nontoxic exposure." In a November 4, 2004 report, a nurse indicated that appellant was treated for exposure to a package at the employing establishment. The report listed diagnosis of acute lung irritation. The Office also received results of diagnostic and chemical tests.

In a December 3, 2004 report, Dr. Raymond K. Seiler, a Board-certified urologist, advised that appellant was seen for back pain and hematuria. He noted that appellant came into contact with a box which leaked liquid in November, and was treated at the emergency room for complaints, which were "mostly respiratory in nature" and epitasis. Dr. Seiler related that appellant noticed back pain and darkened urine four days later. He diagnosed hematuria, flank pain, and stress incontinence and opined that the low back pain was related to her uterus. Dr. Seiler also advised that appellant was undergoing an evaluation for problems related to a fibroid uterus and stress incontinence. In a December 6, 2004 report, Dr. Seiler advised that appellant was having a cystoscopy with retrograde pyelograms to "flank pain and hematuria, the onset of which was after the chemical exposure which occurred on the November 3, 2004 while on the job." He performed surgery on December 8, 2004.

On December 7, 2004 the employing establishment controverted appellant's claim.

By letter dated January 19, 2005, the Office advised appellant that additional factual and medical evidence was needed. The Office allotted appellant 30 days to submit the requested information. It subsequently received chemical testing results.

On February 21, 2005 the Office received an undated letter from appellant. She alleged that the package she was exposed to contained ethanol, isopropanol, acetone, camphene, limonene, pinene and eucalyptol. Appellant never had prior kidney problems or bleeding until the incident. She indicated that there was a detailed report of the incident from her supervisor, and the incident was in the news. The Office also received a report from Samuel Reighley, a forensic toxicologist, confirming the contents of the package. In a November 8, 2004 email, the employing establishment described the events surrounding the chemical exposure on November 3, 2004.

By decision dated February 23, 2005, the Office denied appellant's claim on the grounds that she did not establish an injury as alleged. The Office found that the evidence was sufficient to show that claimed exposure to a liquid (methanol) occurred as alleged. However, the Office found that there was insufficient medical evidence supporting that the accepted employment incident caused the diagnosed condition.

By letter dated March 4, 2005, appellant contended that she was injured on the job. She submitted copies of reports which were previously submitted, nurses notes and laboratory results. On April 18, 2005 appellant requested reconsideration.

In an April 5, 2005 report, Dr. Seiler advised that he saw appellant on December 3, 2004 for back pain and hematuria, which appellant reported began after she came into contact with a package which leaked a liquid at her place of employment the previous month. Appellant related that her urine was tea colored at the time of the onset of her symptoms; however, it had cleared by the time he saw her. She had microscopic hematuria and bilateral back pain. Dr. Seiler noted that diagnostic testing revealed "a cystocele without any signs of obstruction or abnormality" and a two millimeter nonobstructing stone. He opined that appellant's microscopic hematuria and back pain were secondary to a stone and fibroid uterus. However, the onset of her complaints was at least temporally related to the chemical exposure which occurred at work.

In a decision dated July 8, 2005, the Office denied modification of the February 23, 2005 decision. The Office noted that Dr. Seiler saw appellant for pain and hematuria, and noted that this was not a definitive diagnosis and did not establish a causal relationship between a diagnosed medical condition and her employment.

Appellant requested a hearing on October 20, 2005.[1]

By decision dated November 22, 2005, the Office denied appellant's request for an oral hearing on the grounds that she had previously requested reconsideration and that the case could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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[3] and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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. The second

[1] The postmark was October 2005. While the date was unclear, it is clear that it was postmarked in October 2005.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990).

component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[6]

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7] The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.[8]

ANALYSIS -- ISSUE 1

Appellant alleged that she became light-headed and experienced other symptoms after being exposed to chemicals from a leaking parcel while in the performance of duty on November 3, 2004. The Office accepted that the claimed exposure occurred in the performance of duty. The Board finds that the first component of fact of injury, the claimed incident -- that appellant was exposed to methanol, occurred, as alleged.

However, the medical evidence is insufficient to establish that the employment incident caused an injury. The medical reports of record do not establish that appellant's exposure on November 3, 2004 caused a personal injury. The medical evidence does not provide a reasoned explanation of how the employment incident caused or aggravated an injury.[9]

In a November 3, 3004 emergency room report, Dr. Leslie noted that appellant was exposed to an unknown substance at work and noted symptoms of nausea, burning in her throat, a metal taste in her mouth and coughing. He diagnosed a "nontoxic exposure." However, this diagnosis is speculative and Dr. Leslie did not offer any opinion on causal relationship other than to say appellant was exposed to an unknown substance at work. Medical reports not containing rationale on causal relation are of diminished probative value.[10]

Appellant also submitted several reports from Dr. Seiler. In a December 3, 2004 report, Dr. Seiler noted that appellant came into contact with a box which leaked liquid at her employing establishment in November. She was treated at the emergency room for complaints, which were

[6] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[7] *Id*. For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

[8] *Id.*

[9] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[10] *Lois E. Culver* (*Clair L. Culver*), 53 ECAB 412 (2002).

"mostly respiratory in nature" and epitasis. He indicated that appellant subsequently noticed back pain and darkened urine four days later. Dr. Seiler diagnosed hematuria and flank pain, and stress incontinence. However, he attributed her low back pain to her uterus condition. Dr. Seiler, while noting the history of the employment incident, did not provide an opinion establishing whether any of the diagnosed conditions were related to appellant's November 3, 2004 exposure. Therefore, his report is of diminished probative value.[11] On December 6, 2004 Dr. Seiler advised that appellant's cystoscopy with retrograde pyelograms was due to flank pain and hematuria, the onset of which was noted following the chemical exposure of November 3, 2004 while on the job. However, the Board notes that this report is insufficient to establish that the onset of her condition was related to any chemical exposure. The Board has held that an opinion that a condition is causally related to an employment injury merely because the employee was asymptomatic before an incident but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.[12] In an April 5, 2005 report, Dr. Seiler advised that he saw appellant on December 3, 2004 for back pain and hematuria, which appellant reported began after she came into contact with a package which leaked a liquid. Dr. Seiler opined that appellant's "microscopic hematuria and back pain were secondary to a stone and fibroid uterus; however, the onset of her complaints was at least temporally related to the chemical exposure which occurred at work." Dr. Seiler did not provide any explanation to show that the onset of these conditions was related to the exposure to specific chemicals at work. He merely commented on a temporal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's 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.[13]

Appellant also submitted nurses' notes. However, health care providers such as nurses, acupuncturists, physician's assistants, and physical therapists are not defined as physicians under the Act. Their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[14] The Office also received results of diagnostic tests and chemical tests. However, these reports merely noted findings and did not contain an opinion regarding the cause of the reported condition.

Appellant did not submit any other medical evidence that specifically addressed how the November 3, 2004 incident caused or aggravated a diagnosed medical condition. Consequently, appellant has submitted insufficient medical evidence to establish that the November 3, 2004 incident caused an injury or contributed to her diagnosed conditions.

[11] *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

[12] *John F. Glynn*, 53 ECAB 562 (2002).

[13] *Gloria J. McPherson*, 51 ECAB 441(2000).

[14] *Jan A. White*, 34 ECAB 515, 518 (1983).

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."[15] Sections 10.617 and 10.618 of the federal regulations implementing this section of the Act provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[16] The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.[17]

ANALYSIS -- ISSUE 2

The Board finds that the Office properly denied appellant's request for a hearing. Section 8124(b) provides that, "before review under section 8128(a)," a claimant for compensation is entitled to a hearing on her claim on a request made within 30 days after the date of issuance of the decision.[18] Office regulations provided that a claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.[19]

Appellant submitted a request for reconsideration on April 18, 2005. The Office denied her request for reconsideration in a July 8, 2005 decision. Appellant then requested a hearing on October 20, 2005. However, as she had previously requested reconsideration, she was not entitled to a hearing as a matter of right. The Board finds that the Office properly exercised its discretion in denying appellant's hearing request and determining that her case could be addressed equally well by requesting reconsideration and submitting evidence not previously considered.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty. The Board also finds that the Office properly denied appellant's request for an oral hearing.

[15] 5 U.S.C. § 8124(b)(1).

[16] 20 C.F.R. §§ 10.616, 10.617.

[17] *Claudio Vasquez*, 52 ECAB 496 (2002).

[18] *See* 5 U.S.C. § 8124(b).

[19] 20 C.F.R. § 10.616(a) (2002).

ORDER

IT IS HEREBY ORDERED THAT the November 22, July 8 and February 23, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 6, 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