

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

ARDELIAS RICHMOND, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Indianapolis, IN, Employer**

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**Docket No. 06-640
Issued: June 13, 2006**

Appearances:
Ardelias Richmond, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 24, 2006 appellant filed a timely appeal from a December 19, 2005 merit decision of the Office of Workers' Compensation Programs, 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, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained an injury in the performance of duty on September 19, 2005.

FACTUAL HISTORY

On September 20, 2005 appellant, then a 47-year-old casual clerk, filed a traumatic injury claim alleging that on September 19, 2005 she injured her left arm during the performance of duty when some bins fell and hit her. Appellant did not stop work. On September 20, 2005 Kevin W. Newby, a physician's assistant, diagnosed a forearm contusion, which he attributed to appellant's being hit by falling bins. The Office administratively allowed appellant's claim for minor medical treatment up to \$1,500.00. On November 1, 2005 appellant filed a recurrence of

disability claim, alleging that she had limited use of her left arm and pain since the September 19, 2005 work injury. She did not stop work.

By letter dated November 15, 2005, the Office advised appellant that her original claim and recurrence were being opened for formal adjudication. The Office noted that the only evidence of file was from a physician's assistant, which was not considered a medical opinion absent a countersignature by a physician. Appellant was advised to provide a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

Appellant submitted medical reports from Dr. Cynthia Misumi, a Board-certified internist, dated October 31 and November 10, 2005. In the October 31, 2005 report, she diagnosed left forearm pain, which she opined was work related. Appellant was released to light-duty work with restrictions on lifting. On November 10, 2005 Dr. Misumi advised that appellant could return to her regular work. A partial duplicate copy of Mr. Newby's September 20, 2005 report was also provided.

By decision dated December 19, 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 establish that the incident occurred as alleged but the medical evidence was insufficient to establish that appellant's condition was caused by the claimed incident. As the Office denied the original injury claim, it did not consider appellant's subsequent claim for a recurrence of disability.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.¹ When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.²

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a

¹ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

² *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury, as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

specific employment incident or to specific conditions of employment.³ An award of compensation may not be based on appellant's belief of causal relationship.⁴ Neither the mere 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 are sufficient to establish a causal relationship.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.⁶

ANALYSIS

The Board finds that the evidence supports that the incident of September 19, 2005 occurred as alleged. However, the medical evidence is insufficient to establish that the employment incident of being hit by falling bins, caused an injury. In particular, the medical evidence presented does not contain a rationalized medical opinion explaining how the September 19, 2005 employment incident caused or aggravated any particular medical condition or disability.

Appellant provided a September 20, 2005 report from Mr. Newby, a physician's assistant. However, this report is of no probative value in establishing appellant's claim as a physician's assistant is not a physician as defined under the Act.⁷ Because of this, Mr. Newby's opinion is not considered medical evidence.

Dr. Misumi's narrative reports of October 31 and November 15, 2005 lack sufficient probative value to establish appellant's claim. Although Dr. Misumi opined that appellant's left forearm pain is work related, she failed to provide any history of the September 19, 2005 work incident or address how or why such left forearm pain was caused or aggravated by the September 19, 2005 work incident. The Board has long held that a medical opinion based on an incomplete history was insufficient to establish causal relationship.⁸ Moreover, Dr. Misumi only provided a diagnosis of pain. Pain, however, is considered a symptom, not a diagnosis and does

³ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁵ *Florencio D. Flores*, 55 ECAB ____ (Docket No. 04-942, issued July 12, 2004).

⁶ *John W. Montoya*, 54 ECAB 306 (2003).

⁷ *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician."

⁸ *Cowan Mullins*, 8 ECAB 155, 158 (1955).

not constitute a basis for payment of compensation in the absence of objective findings of disability.⁹ Thus, Dr. Misumi's reports are insufficient to establish appellant's claim.

Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.¹⁰ As there is no rationalized medical evidence of record establishing that appellant sustained a left forearm condition while in the performance of duty as alleged, the Board finds that appellant has failed to meet her burden of proof. As such, it is not necessary to consider whether she has sustained a recurrence of disability.¹¹

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.¹²

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 13, 2006
Washington, DC

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

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

⁹ See *John L. Clark*, 32 ECAB 1618 (1981).

¹⁰ *Frankie A. Farinacci*, 56 ECAB ____ (Docket No. 05-1282, issued September 2, 2005).

¹¹ The Board precedent contemplates that, in order for there to be a recurrence, there must be an accepted condition. See, e.g., *Ricky S. Storms*, 52 ECAB 349 (2001) (the medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury). The fact that the Office administratively allowed the claim for treatment of up to \$1,500.00, does not, by itself, constitute a formal acceptance of any particular condition or period of disability. See *Gary L. Whitmore*, 43 ECAB 441 (1992) (where the Board found that payment of compensation by the Office does not, in and of itself, constitute acceptance of a particular condition or disability in the absence of evidence from the Office indicating that a particular condition or disability has been accepted as work related).

¹² The Board notes that appellant submitted additional evidence in support of her appeal. However, the Board may not consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. See 20 C.F.R. § 501.2(c).