

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

M.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Detroit, MI, Employer**

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**Docket No. 06-1794
Issued: November 15, 2006**

Appearances:
Steve Burt, for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 31, 2006 appellant filed a timely appeal from a July 10, 2006 decision of an Office of Workers' Compensation Programs' hearing representative which affirmed the denial of her claim for a vertigo condition. Under 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 has met her burden of proof in establishing that she sustained vertigo in the performance of duty.

FACTUAL HISTORY

Appellant, a 39-year-old letter carrier, filed a claim for benefits on October 26, 2004, alleging that she developed a vertigo condition causally related to factors of her employment. In a report dated February 18, 2004, Dr. Lascelles Pinnock, Board-certified in otolaryngology, stated that appellant related that she experienced a spinning sensation which came about when she laid on her right side or put her head back. Appellant asserted that this condition began

around Christmas 2003 when she was lifting heavy bags of mail at work. Dr. Pinnock diagnosed benign positional vertigo and prescribed vestibular exercises. He stated:

“According to the history of onset given by [appellant], the dizziness was immediately associated with strenuous lifting while [she] was performing her letter carrier duties. Therefore, I can state with reasonable medical certainty that the origin of the condition in this instance is occupational and arose from the performance of her ... duties [with the employing establishment]. I therefore recommend that she return to work, but she should not lift more than 35 pounds for the next 6 months.”

By letter dated November 17, 2004, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from a treating physician describing her symptoms, the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days.

Appellant submitted a January 30, 2004 report from Dr. Pinnock which reiterated the findings and conclusions of his February 18, 2004 report. She also submitted the results of several diagnostic tests.

By decision dated April 29, 2005, the Office denied appellant’s claim, finding that she failed to submit medical evidence sufficient to establish that she sustained the claimed vertigo condition in the performance of duty.

On May 17, 2005 appellant requested an oral hearing, which was held on April 24, 2006. At the hearing, appellant submitted treatment notes and diagnostic tests from Dr. Pinnock from January and February 2004.

By decision dated July 10, 2006, an Office hearing representative affirmed the April 29, 2005 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing that 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, 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.² These are the

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed, or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. 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.⁴

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her claimed cervical condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵

ANALYSIS

The Board finds that appellant has failed to submit sufficient medical evidence which relates her claimed vertigo condition to factors of her federal employment. For this reason, she has not discharged her burden of proof to establish that her condition was sustained in the performance of duty.

Appellant submitted reports dated January and February 2004 from Dr. Pinnock. However, the reports of the physician did not provide a probative, rationalized medical opinion that the claimed condition was causally related to employment factors. Dr. Pinnock related appellant's history that she developed dizziness and a recurring spinning sensation due to lifting heavy bags of mail at work. He noted that these sensations occurred while appellant laid on her right side or put her head back. Dr. Pinnock diagnosed benign positional vertigo, which originated from the performance of her employment duties.

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

⁵ *See Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

The medical reports appellant submitted did not contain a probative, rationalized medical opinion that the claimed vertigo condition was causally related to employment factors. They are of limited probative value as they do not contain sufficient medical rationale explaining how or why appellant's claimed vertigo condition was caused by or related to factors of her federal employment.⁶ Dr. Pinnock related appellant's symptoms of dizziness to positional vertigo and stated that this condition stemmed from her employment. However, he failed to provide an explanation of how appellant's work as a letter carrier would cause or contribute to her vertigo. The mere fact that a disease or condition manifests itself during a period of employment is not sufficient to establish causal relation.⁷ The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁸ Dr. Pinnock did not submit an opinion which sufficiently described the process through which appellant's work duties would have been competent to cause the claimed vertigo condition. The Office therefore properly found in its April 29, 2005 condition that appellant did not sustain a vertigo condition in the performance of duty.

Appellant requested a hearing and submitted several treatment notes from Dr. Pinnock. As noted, however, the physician did not explain how appellant's vertigo was causally related to any of her work duties.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment are sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that her claimed vertigo condition was causally related to her employment. The Board therefore affirms the July 10, 2006 decision of the Office hearing representative, which affirmed the April 29, 2005 decision.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof in establish that her claimed vertigo condition was sustained in the performance of duty.

⁶ *William C. Thomas*, 45 ECAB 591 (1994).

⁷ *See Allen C. Hundley*, 53 ECAB 551 (2002).

⁸ *See Anna C. Leanza*, 48 ECAB 115 (1996).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 15, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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