

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

B.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Port St. Lucie, FL, Employer**

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**Docket No. 07-1020
Issued: August 14, 2007**

Appearances:
Appellant, pro se
Office of 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 March 6, 2007 appellant filed a timely appeal from a May 2, 2006 Office of Workers' Compensation Programs' decision denying her traumatic injury claim. Pursuant to 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 a neck and right arm injury on July 7, 2000 in the performance of duty.

FACTUAL HISTORY

This case was previously before the Board. On May 16, 2005 the Board affirmed a February 13, 2003 Office decision denying appellant's traumatic injury claim.¹ The May 16, 2005 decision of the Board is hereby incorporated by reference.

On March 30, 2006 appellant requested reconsideration. She submitted a November 29, 2005 report from Dr. Hal M. Tobias, a Board-certified neurologist and psychiatrist, who noted that he had reviewed appellant's medical records and conducted a physical examination. Dr. Tobias stated:

“[I]t is my expert medical opinion that the causal relationship of the injury that [appellant] sustained to her right arm, shoulder and cervical area was due to the act of her pulling on the emergency brake of [her] vehicle on July 7, 2000 while she was performing her postal duties.

“If nothing else, on a temporal basis this is documented by the [emergency room] visit and report of the day of the accident.”

* * *

“In regards to [appellant's] muscle pain, direct trauma may be a cause of muscle pain. Traumatic muscular damage is invariably associated with pain which may have a gradual or immediate onset. It appears that her injury was secondary to an eccentric contraction. That is when the muscle contracts while being stretched. When this occurs damage and pain are especially likely. In damaged muscles, tenderness, a decrease in pressure pain [illegible] pain with movement are due to sensitization of muscle nociceptors (pain receptors). The sensitized nociceptors have a lower threshold of excitation and a graded response to noxious (painful) stimuli.”

* * *

“Pain that is elicited by noxious stimulation of normal tissue has an early phase that is perceived as sharp and well localized and that lasts as long as the stimulus. This can be followed ... by delayed or second phase pain that may be dull, aching or burning and more diffuse. Second phase pain may predominate in patients with chronic pain.

“In my opinion, there is no other reason for this injury other than the above described. [Appellant] was a patient prior to this accident in 2000 for other

¹ Docket No. 04-130 (issued May 16, 2005). On July 27, 2000 appellant, then a 38-year-old letter carrier, filed a claim for a traumatic injury alleging that on July 7, 2000 she experienced neck and right arm pain when she pulled the hand brake of her delivery truck. Emergency room reports dated July 7 and 8, 2000 indicated that she sustained a muscle strain. By decisions dated October 3, 2000, August 23, 2001, March 5 and September 30, 2002 and February 13, 2003, the Office denied appellant's claim on the grounds that the evidence did not establish causal relationship between her neck and right arm injury and the July 7, 2000 work incident.

nonrelated reasons and did not have this condition until the [July 7, 2000] accident.”

On April 26, 2006 the employing establishment stated that appellant injured her neck in a February 25, 2004 motor vehicle accident and that this accident might have caused her 2006 neck and right arm symptoms.

By decision dated May 2, 2006, the Office denied modification of its prior decisions denying appellant’s claim for a traumatic injury to her neck and right arm on July 7, 2000.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “fact of injury” has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁵ An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.

To establish a causal relationship between a claimant’s condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal 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.⁶

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 5.

ANALYSIS

The Board finds that the evidence is insufficient to establish that appellant sustained an injury to her neck and right arm on July 7, 2000 when she pulled the hand brake of her delivery truck.

In a November 29, 2005 report, Dr. Tobias stated that he had reviewed appellant's medical records and conducted a physical examination. He diagnosed cervical radiculopathy but did not provide a more specific diagnosis of her neck and right arm conditions. Dr. Tobias stated that, on a temporal basis, appellant's injury was documented by the July 7, 2000 emergency room report. However, the July 7, 2000 emergency room report was considered previously in this case and was found to be insufficient to establish causal relationship because it did not give the cause of the diagnosed condition, a muscle strain or identify the specific area of the body affected. The employing establishment advised the Office that appellant injured her neck in a February 25, 2004 motor vehicle accident. Dr. Tobias did not mention this accident in his report. Therefore, his medical opinion regarding causal relationship is not based on a complete and accurate factual and medical background. Dr. Tobias stated his opinion that appellant's neck and right arm injury was due to the act of pulling the emergency brake of her postal vehicle on July 7, 2000. However, his opinion regarding causal relationship is speculative. Dr. Tobias stated that direct trauma "may" be a cause of muscle pain and "it appears" that appellant's muscle pain was secondary to an eccentric muscle contraction while the muscle was being stretched. Additionally, he did not provide sufficient explanation as to how appellant's neck and right arm pain in 2005 was causally related to an incident that occurred five years earlier, except to say that she was experiencing delayed or "second phase" pain. While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal.⁷ Due to these deficiencies, the November 29, 2005 report from Dr. Tobias fails to establish that appellant sustained a neck or right arm injury as a result of the July 7, 2000 work incident. Therefore, the Office properly denied appellant's claim.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury on July 7, 2000 in the performance of duty.

⁷ *Kathy A. Kelley*, 55 ECAB 206 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 2, 2006 is affirmed.

Issued: August 14, 2007
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