

hospital.¹ Appellant submitted medical reports from the Milton S. Hershey Medical Center for the period May 8 to 20, 1990 relating to injuries sustained in a motor vehicle accident.

By letter dated November 9, 2004, the Office advised appellant that the information submitted was insufficient to establish that she was injured in the performance of duty. The Office advised her to submit additional evidence to support her claim, including details of the claimed event, and a report from her physician containing a diagnosis and an explanation as to why and how the diagnosed condition was caused or aggravated by the work-related incident.

Appellant submitted a November 12, 2004 return-to-work certificate from Dr. Donald Spigner, Board-certified in the field of family medicine. Dr. Spigner described the nature of appellant's injury as cervical stenosis with radiculopathy and indicated that he was uncertain when she would be able to return to work. In a November 19, 2004 statement, appellant indicated that she had a November 20, 2004 appointment with a neurologist regarding her symptoms, and a surgical screening scheduled for November 23, 2004.

Appellant submitted emergency department records from Community General Orthopedic Hospital. In a report dated September 26, 2004, Dr. Robert S. Thompson, Board-certified in the field of family medicine, diagnosed "neck, right shoulder, right arm pain." In response to a request for a description of the incident, he stated "increasing pain in neck, right shoulder and arm while casing mail in the letter case." In a narrative report dated September 26, 2004, Dr. Thompson related the history of injury, as described by appellant. Appellant stated that she was on modified duty pursuant to injuries sustained in a September 14, 2003 work-related incident. She indicated that, due to an exacerbation of pain that evening, she was unable to perform her job duties of casing mail, which involves repetitive motion. Dr. Thompson noted that appellant was in the middle of a "long drawn out workers' comp[ensation] process that has lasted over a year and is apparently unable to tolerate modified work duty." He stated that she might need surgery to improve her symptoms, but that such a determination could not be made from a single emergency room visit in the middle of the night. Dr. Thompson provided a diagnostic impression of "neck, right shoulder, right arm pain."

In a November 12, 2004 letter to the employing establishment, Dr. Spigner stated that appellant's letter-casing job was exacerbating her condition. He indicated that "when she last performed this type of work on September 26, 2004, she developed a new symptom of her condition, extreme pain which radiated down her arm." Noting that appellant had a preexisting condition that was impacted by an on-the-job injury, Dr. Spigner stated that "this is the same scenario that occurred on September 14, 2003." He recommended additional work restrictions to avoid and slow further harm to her condition, including no repetitive arm motion, no work above chest level, no exposure to drafts, and frequent movement as needed.

On November 21, 2004 the employing establishment controverted appellant's claim, contending that the medical evidence of record failed to establish that she sustained a traumatic injury causally related to her employment.

¹ The record reflects that, on September 14, 2003, appellant filed an occupational disease claim (File No. 032023197), which was accepted for cervical strain on April, 9, 2004. Her benefits were terminated by decision dated September 29, 2004, on the grounds that residuals from the accepted injury had resolved.

In a letter dated December 3, 2004, Anna Marie Deily, a manager, stated that, after advising her that she had been casing mail and was in pain, appellant requested permission to leave the employing establishment, intending to go to the emergency room. Appellant appeared to be in pain at the time. Ms. Deily stated that she was unable to remember the date of the incident.

By decision dated December 9, 2004, the Office denied appellant's claim, finding that she had failed to establish the fact of injury. The Office found that the evidence was insufficient to establish that the event occurred as alleged and that there was no medical evidence providing a diagnosis which could be connected with the claimed event. On December 14, 2004 appellant submitted a request for an oral hearing

On December 1, 2004 appellant submitted responses to questions posed by the Office. She stated that, on the date in question, she was casing letters into the manual letter case, and retrieving mail by reaching for handfuls from "working letter trays" to place on her ledge, which was at shoulder level. Appellant alleged that the repetitive motion of her right arm to sort and retrieve the letters, and the movement of her neck and head all around, just "set off new symptoms of extreme pain in [her] neck and down [her] right arm to [her] hand." She stated that the immediate effect was an increase in pain in her neck and right shoulder. After her first hour of working, appellant allegedly took a half-hour break, after which she attempted to return to work. However, she was still in pain and unable to work.

Appellant submitted a report dated January 7, 2005 from Dr. Steven E. Morganstein, a Board-certified physiatrist. Noting that her date of injury was September 26, 2004, Dr. Morganstein stated that he first treated appellant on May 17, 2004, when he had the impression that her neck pain and right arm symptoms were related to cervical disc degenerative disease and cervical spinal stenosis. He related appellant's report that, while she had not experienced a specific work-related injury, she gradually began to experience right-sided neck pain, as well as right arm pain. Appellant submitted progress notes for the period July 8 to 13, 2004, bearing an illegible signature, reflecting that she was experiencing neck pain at that time. The record also contains June 10, 2003 emergency department records from Harrisburg Hospital related to a work-related left foot injury.

At the October 25, 2005 hearing, appellant testified that her neck and shoulder condition preexisted her September 26, 2004 injury, noting that the Office had accepted her September 2003 occupational disease claim. On September 26, 2004 she experienced new symptoms while casing letters, including pain radiating down her arm. Appellant indicated that she also suffered from "normal" neck pain. She stated, "When I sit in that position and do the arm movements required to sort that mail, it increases the pain in my neck from repetitive motion of my arms and neck moving up and down, sideways to search for where the mail is getting sorted." The hearing representative asked appellant whether she made any particular physical movement on September 26, 2004 that resulted in pain. Appellant stated that "it was just a gradual onset that day," and that the pain developed in the second half hour of her shift.

By decision dated November 29, 2005, the Office hearing representative affirmed the December 9, 2004 decision. The representative found that the medical evidence failed to

establish that appellant sustained an injury as a result of casing mail for two hours on September 26, 2004.

On November 27, 2006 appellant, through her representative, requested reconsideration, contending that her work-related activity permanently aggravated her multilevel cervical degenerative disc disease and cervical spinal stenosis. Appellant submitted a copy of the November 29, 2005 decision; a copy of Dr. Morganstein's January 7, 2005 report; a copy of Dr. Spigner's November 12, 2004 report; and copies of September 26, 2004 emergency department reports from Pinnacle Health Hospital;² a November 17, 2006 report from Dr. Morganstein and a November 26, 2006 report from Dr. Spigner.

On November 17, 2006 Dr. Morganstein reiterated appellant's complaints of progressive neck pain, which she attributed to work-related functions, including excessive amounts of repetitive heavy lifting, reaching, twisting and overhead activities. He stated that appellant's initial diagnosis on May 17, 2004 was consistent with multilevel cervical degenerative disc disease and cervical spinal stenosis. Noting appellant's history of two motor vehicle accidents, Dr. Morganstein indicated that appellant had restrictions placed on her work activities and attempted to return to work at modified positions; however, she was unable to tolerate her work activities and was eventually "taken completely off of work." He opined to a reasonable degree of medical certainty that appellant's diagnosed condition was permanently aggravated by her work activities, explaining that, "over a period of time, the series of acts required as part of her job intensified the severity of her preexisting condition, which resulted in worsening her symptoms and progression in her disability."

In a November 26, 2006 report, Dr. Spigner provided a history of appellant's injury, noting two motor vehicle accidents in 1988 and 1990, and a diagnosis of left and right shoulder tendinitis in 1996. Appellant experienced progressive neck and shoulder pain, as well as headaches. In September 2003 an x-ray and magnetic resonance imaging (MRI) scan of the cervical spine revealed marked multilevel degenerative disc disease with spinal and intervertebral foraminal stenosis from C4-7. Dr. Spigner indicated that he became involved in appellant's case on October 15, 2004, as a follow-up to a September 26, 2004 emergency department visit. He stated that, "The definitive diagnosis post June 29, 2004 was moderate cervical stenosis and foraminal stenosis at the C3-6 levels; marked chronic neck pain, cause undetermined with normal electrophysiologic studies; cervical disc disease." Dr. Spigner opined that appellant's diagnosed conditions were not caused by the "event" of June 29, 2004, but were exacerbated by the work conditions.

By decision dated December 11, 2006, the Office denied modification of the November 29, 2005 decision, finding that the medical evidence of record was insufficient to establish that appellant sustained an injury as defined by the Federal Employees' Compensation Act. The Office found that there was no rationalized medical opinion explaining how appellant's specific work duties caused or aggravated her claimed condition.

² The Board notes that appellant's representative stated in the request for reconsideration that she was submitting a May 8, 1990 MRI scan report, however, the record does not contain a copy of the report.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of the 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 or specific condition for which compensation is claimed is causally related to the employment injury.³ When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the “fact of injury,” namely, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.⁴

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 specific employment incident or to specific conditions of employment.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

An award of compensation may not be based on appellant’s belief of causal relationship. 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 is sufficient to establish a causal relationship.⁷

An employee’s statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁸ Failure of the Office to make a finding upon operative facts may allow the Board, on review, to find the operative facts implicitly resolved in claimant’s favor when such operative

³ *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Betty J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003). 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) and (ee) (2007).

⁵ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

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

⁷ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁸ *Caroline Thomas*, 51 ECAB 451 (2000).

facts are precedent or preliminary facts to the finding upon which the rejection is based, and such conclusion is supportable on the record.⁹

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on September 26, 2004. There is no dispute that the incident occurred as alleged, namely, that appellant was casing mail on the date in question. However, she failed to establish a causal connection between her claimed cervical condition and the accepted employment activity. Relevant medical evidence consists of reports from Drs. Spigner and Morganstein, and September 26, 2004 emergency department records. None of the medical reports provided contains a rationalized explanation as to how the activity of casing mail on September 26, 2004 caused or aggravated appellant's diagnosed condition.

In a September 26, 2004 emergency department report, Dr. Thompson diagnosed "neck, right shoulder, right arm pain." In response to a request for a description of the incident, he stated "increasing pain in neck, right shoulder and arm while casing mail in the letter case." Dr. Thompson's report did not contain a specific diagnosis or objective findings. A mere diagnosis of pain does not constitute a basis for payment of compensation.¹⁰ Therefore, his report is of diminished probative value. In a narrative report dated September 26, 2004, Dr. Thompson related the history of injury, as described by appellant, who stated that she was on modified duty pursuant to injuries sustained in a September 14, 2003 work-related incident. Appellant indicated that she was having an exacerbation of pain that evening, and was unable to perform her job duties of casing mail, which involves repetitive motion. Dr. Thompson noted that appellant was in the middle of a "long drawn out workers' comp[ensation] process that ha[d] lasted over a year and [was] apparently unable to tolerate modified work duty." He stated that she might need surgery to improve her symptoms, but that such a determination could not be made from a single emergency room visit in the middle of the night. Dr. Thompson provided a diagnostic impression of "neck, right shoulder, right arm pain." As noted above, a diagnosis of pain is insufficient to establish appellant's claim. Dr. Thompson did not render an opinion as to the cause of appellant's condition. The Board has long held that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of diminished probative value.¹¹

Dr. Spigner's reports are also insufficient to establish that appellant sustained a traumatic injury in the performance of duty on September 26, 2004. In a November 12, 2004 return-to-work certificate, Dr. Spigner described the nature of appellant's injury as cervical stenosis with radiculopathy and indicated that he was uncertain when she would be able to return to work. As this report does not offer any opinion regarding the cause of appellant's condition, it is of limited probative value.¹²

⁹ *Arietta K. Cooper*, 5 ECAB 11 (1952).

¹⁰ *Robert Broome*, *supra* note 3.

¹¹ *Michael E. Smith*, 50 ECAB 313 (1999).

¹² *Id.*

In a November 12, 2004 letter to the employing establishment, Dr. Spigner stated that appellant's letter-casing job was exacerbating her condition. He indicated that, "when she last performed this type of work on September 26, 2004, she developed a new symptom of her condition, extreme pain which radiated down her arm." Noting that appellant had a preexisting condition that was impacted by an on-the-job injury, he stated that "this is the same scenario that occurred on September 14, 2003." Although he indicated that generally appellant's job duties were exacerbating her condition, and noted that appellant developed a new symptom on the date in question, Dr. Spigner did not opine that any specific activity performed on September 26, 2004 caused or contributed to appellant's condition; nor did he explain why appellant's current condition was not merely a natural progression of her preexisting condition, rather than a result of a specific work activity performed on that date. Therefore, his opinion is of diminished probative value.¹³

In his November 26, 2006 report, Dr. Spigner indicated that he became involved in appellant's case on October 15, 2004, as a follow-up to a September 26, 2004 emergency department visit. He stated that, "The definitive diagnosis post June 29, 2004 was moderate cervical stenosis and foraminal stenosis at the C3-6 levels; marked chronic neck pain, cause undetermined with normal electrophysiologic studies; cervical disc disease." Dr. Spigner opined that appellant's diagnosed conditions were not caused by the "event" of June 29, 2004, but were exacerbated by the work conditions. However, he did not identify any specific employment factors believed to be responsible for appellant's diagnosed condition; nor did he explain how appellant's work activities on September 26, 2004 caused or contributed to appellant's condition. Therefore, this report is also of diminished probative value.

Dr. Morganstein's reports are insufficient to establish appellant's claim. On January 7, 2005 he stated that he first treated appellant on May 17, 2004, when he had the impression that her neck pain and right arm symptoms were related to cervical disc degenerative disease and cervical spinal stenosis. Although Dr. Morganstein noted that the date of injury was September 26, 2004, he did not express an opinion as to the cause of appellant's condition. Therefore, his report is of limited probative value. In his November 17, 2006 report, Dr. Morganstein reiterated appellant's complaints of progressive neck pain, which she attributed to work-related functions, including excessive amounts of repetitive heavy lifting, reaching, twisting and overhead activities. He stated that appellant's initial diagnosis on May 17, 2004 was consistent with multilevel cervical degenerative disc disease and cervical spinal stenosis. Noting appellant's history of two motor vehicle accidents, Dr. Morganstein indicated that appellant had restrictions placed on her work activities and attempted to return to work at modified positions; however, she was unable to tolerate her work activities and was eventually "taken completely off of work." He opined to a reasonable degree of medical certainty that appellant's diagnosed condition was permanently aggravated by her work activities, explaining that, "over a period of time, the series of acts required as part of her job intensified the severity of her preexisting condition, which resulted in worsening her symptoms and progression in her disability." Dr. Morganstein's report does not support appellant's claim for a traumatic injury, which is defined by the Act's implementing regulations as a condition caused by a specific event

¹³ *Katherine J. Friday, supra* note 5.

or incident, or series of events or incidents, within a single workday or shift.¹⁴ Rather, Dr. Morganstein opined that appellant's condition developed over a long period of time.¹⁵ He did not provide an opinion as to how, specific employment activities in which appellant was engaged on September 26, 2004 caused or exacerbated her diagnosed condition. His report is therefore of limited probative value.

The Board notes that the remaining medical evidence of record includes x-ray and MRI scan reports; May 1990 reports related to a motor vehicle accident; and June 10, 2003 emergency department records pertaining to a work-related left foot injury. To the degree that these reports do not contain an opinion as to the cause of appellant's alleged cervical condition, they are of diminished probative value and are insufficient to establish appellant's claim.

In this case, there is insufficient evidence of record to establish a causal relationship between a diagnosed condition and the September 26, 2004 work activities. The Office advised appellant of the type of medical evidence required to establish her claim; however, she failed to submit such evidence. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between her claimed condition and her employment.¹⁶ To establish a causal relationship, appellant must submit a physician's report which explains how employment factors, identified by appellant, caused or aggravated any diagnosed condition. Appellant failed to submit such evidence and, therefore, failed to satisfy her burden of proof.

CONCLUSION

The Board finds that appellant did not meet her burden of establishing that she sustained an injury causally related to her employment on September 26, 2004.

¹⁴ See 20 C.F.R. § 10.5(ee) (2007).

¹⁵ See 20 C.F.R. § 10.5(q) (2007) (“[o]ccupational disease or [i]llness means a condition produced by the work environment over a period longer than a single workday or shift”).

¹⁶ *Patricia J. Glenn*, 53 ECAB 159 (2001).

ORDER

IT IS HEREBY ORDERED THAT the December 11, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 2007
Washington, DC

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

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