

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

J.W., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Omaha, NE, Employer**

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**Docket No. 08-1567
Issued: December 9, 2008**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 28, 2008 appellant filed a timely appeal of the May 30, 2007 merit decision of the Office of Workers' Compensation Programs, finding that she did not sustain an injury while 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 appeal.

ISSUE

The issue is whether appellant has established that she sustained a left shoulder injury while in the performance of duty.

FACTUAL HISTORY

On August 21, 2003 appellant, then a 71-year-old food service worker, filed a traumatic injury claim alleging that on August 19, 2003 she sustained a contusion to her left upper arm when she struck it on faucet handles.¹

By letter dated March 2, 2006, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested a medical report which provided a diagnosis and an explanation as to how the diagnosed condition was caused by the August 19, 2003 incident.

A December 9, 2005 treatment note of Dr. James V. Ortman, a Board-certified internist, stated that he discussed appellant's disability and its relationship to her job performance. In a February 2, 2006 treatment note, Dr. Ortman stated that she experienced shoulder pain dating back to an injury sustained at work in August 2003. He noted her medical treatment.

A March 20, 2006 narrative statement of Vicki L. McCarville, a coworker, related that appellant ran into a water faucet handle in the dish room on August 19, 2003. She stated that appellant sustained a very large bruise on the left upper arm/shoulder. Ms. McCarville took her to see the employing establishment's nurse on the date of injury. Months later appellant showed Ms. McCarville her arm/shoulder which was still discolored.

By decision dated March 30, 2006, the Office denied appellant's claim. It found that the August 19, 2003 incident occurred at the time, place and in the manner alleged. However, the medical evidence was insufficient to establish that appellant's left shoulder condition was causally related to the accepted employment incident.

In an October 17, 2005 treatment notes, Dr. Ortman reported appellant's symptoms, which included left arm and bilateral shoulder pain. He stated that she continued to have manifestations of Raynaud's disease.

On March 19, 2007 appellant filed claims for a schedule award and a recurrence of disability commencing June 17, 2005. A June 17, 2005 treatment note of Dr. Kiran K. Lassi and Dr. Scott F. Menolascino, both Board-certified internists, reported normal findings on examination of appellant's hands. They found no focal deficits or signs of mononeuropathy. Appellant had a negative Babinsky reflex and Phalen's and Tinel's signs bilaterally. Her sensation was intact. Dr. Lassi and Dr. Menolascino stated that appellant sustained bilateral numbness with color change that was most likely Raynaud's disease induced due to stress. In a March 2, 2007 report, Dr. Leonard E. Weber, a Board-certified neurologist, provided the results of electromyogram (EMG) and nerve conduction testing. He reported bilateral median nerve injuries within the carpal tunnels, mild-to-moderate on the right and mild on the left. Dr. Weber stated that the test was otherwise normal in the right upper extremity. There was no evidence of any injuries at a peripheral nerve, brachial plexus or a cervical nerve root level.

¹ Appellant retired from the employing establishment on August 31, 2005.

By letter dated March 21, 2007, the Office advised appellant that no action would be taken on her schedule award and recurrence of disability claims as it had denied her claim. Appellant was instructed to review the appeal rights attached to the March 30, 2006 decision if she disagreed with it.

On April 2, 2007 appellant requested reconsideration of the March 30, 2006 decision. By decision dated May 30, 2007, the Office denied modification of this decision.²

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing 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.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

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 he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ The medical evidence required to establish a causal relationship is rationalized medical opinion 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.⁷ Neither the fact that appellant's condition became apparent during a

² Following the issuance of the Office's May 30, 2007 decision, the Office received additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office with a formal written request for reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Gary J. Watling*, 52 ECAB 357 (2001).

⁶ *See Alvin V. Gadd*, 57 ECAB 172, 175 (2005); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *Solomon Polen*, 51 ECAB 341 (2000).

period of employment nor her belief that the condition was caused by her employment, is sufficient to establish a causal relationship.⁸

ANALYSIS

The record establishes that on August 19, 2003 appellant struck her left upper arm on faucet handles while performing her work duties. The Board finds, however, that the medical evidence submitted is insufficient to establish that her diagnosed left upper extremity conditions were caused or aggravated by the August 19, 2003 employment incident.

On December 9, 2005 Dr. Ortman discussed with appellant her disability and its relationship to her job. He did not provide a firm medical diagnosis related to the August 19, 2003 employment incident. Further, Dr. Ortman did not opine that appellant's disability was caused by the accepted employment incident. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁹ In subsequent reports, Dr. Ortman stated that appellant suffered from bilateral shoulder and left arm pain and manifestations of Raynaud's disease. On February 2, 2006 he stated that her shoulder pain dated back to an August 2003 work injury. Again, Dr. Ortman did not provide a firm medical diagnosis or explain how her symptoms related to the August 19, 2003 employment incident. He did not provide any medical rationale explaining how appellant's bilateral shoulder or left arm pain or Raynaud's disease were caused or aggravated by the accepted employment incident.¹⁰

Dr. Lassi's and Dr. Menolascino's June 17, 2005 treatment note reported normal findings on examination of appellant's hands. They found no focal deficits or signs of mononeuropathy, a negative Babinsky reflex and Phalen's and Tinel's signs bilaterally and intact sensation. They stated that she experienced bilateral numbness with color changes that were most likely Raynaud's disease due to stress. Dr. Weber's March 2, 2007 EMG and nerve conduction test results demonstrated bilateral median nerve injuries within the carpal tunnels, mild to moderate on the right and mild on the left. He stated that the test was otherwise normal in the right upper extremity as there was no evidence of any peripheral nerve, brachial plexus or a cervical nerve root injury. The physicians, however, did not address whether appellant's bilateral hand conditions were caused by the accepted employment incident.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a left upper extremity condition causally related to the accepted August 19, 2003 employment incident. Appellant did not meet her burden of proof.

⁸ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁰ *Id.*

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a left upper extremity injury while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2008
Washington, DC

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

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

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