United States Department of Labor
Employees' Compensation Appeals Board

S.B., Appellant	)	
and	)	**Docket No. 08-1589**
	)	**Issued: December 9, 2008**
DEPARTMENT OF TRANSPORTATION, PIPELINE & HAZARDOUS MATERIALS SAFETY, PIPELINE SAFETY, Washington, DC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 19, 2008 appellant filed a timely appeal from the merit decision of the Office of Workers' Compensation Programs dated April 24, 2008 denying her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on April 27, 2007, as alleged.

FACTUAL HISTORY

On May 8, 2007 appellant, then 50 years old, filed a traumatic injury claim alleging that on April 27, 2007, while participating in an office move, she was unloading 20 boxes of supplies and placing them in a cabinet when she felt a pain in her back and pains in her legs. She alleged

that she suffered an injury to her back through to the back of her legs and sustained a "loose grip" in her left hand.

In a report dated May 2, 2007, appellant received treatment from a physician's assistant at Kaiser Permanente, who diagnosed backache without radiculopathy and gave appellant instructions on how to treat the pain. She indicated that appellant could return to work on May 5, 2007.

By letter dated March 13, 2008, the Office requested that appellant submit further evidence. In response, appellant resubmitted the May 2, 2007 report from Kaiser Permanente. She also wrote a letter listing witnesses and giving further details about how the injury occurred. Appellant further noted that when she called Kaiser Permanente to make an appointment, she was informed that the earliest appointment they had was May 2, 2007.

In a decision dated April 24, 2008, the Office found that the evidence supported that the claimed events occurred, as alleged. However, appellant's claim was denied as there was no medical evidence that provided a diagnosis which could be connected to the events.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,[2] including that she is an "employee" within the meaning of the Act[3] and that she filed her claim within the applicable time limitation.[4] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[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 or she actually experienced the employment incident at the time, place and in the manner alleged.[6] Second, the employee must submit

[1] 5 U.S.C. §§ 8101-8193.

[2] *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[3] *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008).

[4] *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

[5] *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

In order to satisfy the burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.[8] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.[9]

ANALYSIS

In the instant case, the Office accepted that the employment incident occurred as alleged. However, it denied appellant's claim as there was no medical evidence that provided a diagnosis which could be connected to the established event. The only medical evidence submitted in support of appellant's claim was a report by a physician's assistant. A physician's assistant is not a physician as defined under the Act.[10] Therefore, the Board finds that her report has no probative value in establishing that appellant sustained an injury while in the performance of duty.

Without a well-reasoned medical opinion by a qualified physician that explains how appellant experienced a compensable medical condition causally related to the incident of April 27, 2007, appellant has not established that she sustained an injury under the Act.[11]

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.[12] There is insufficient medical evidence to establish that appellant sustained an injury on April 27, 2007. Accordingly, the Board finds that appellant failed to meet her burden of proof.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on April 27, 2007, as alleged.

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[7] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[8] *Gary L. Fowler*, 45 ECAB 365 (1994).

[9] *Phillip L. Barnes*, 55 ECAB 426 (2004); *Jamel A. White*, 54 ECAB 224 (2002).

[10] *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); *George H. Clark*, 56 ECAB 162 (2004); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentist, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

[11] *Tomas Martinez*, 54 ECAB 623 (2003).

[12] *John D. Jackson*, 55 ECAB 465 (2004); *William Nimitz*, 30 ECAB 57 (1979).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 24, 2008 is affirmed.

Issued: December 9, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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