

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

B.H., Appellant

and

FEDERAL JUDICIARY, Miami, FL, Employer

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**Docket No. 08-1448
Issued: November 6, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 15, 2008 appellant filed a timely appeal from a February 20, 2008 Office of Workers' Compensation Programs' merit decision. 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 established that she sustained a cervical injury in the performance of duty on December 27, 2007.

FACTUAL HISTORY

On December 27, 2007 appellant, a 41-year-old probation officer, experienced pain and stiffness in her neck and upper back when her vehicle was struck from behind by another vehicle and filed a claim.

By letter dated January 14, 2008, the Office advised appellant that she needed to submit additional factual and medical evidence in support of her claim. It stated that she had 30 days to submit the requested information. Appellant did not submit any medical evidence.

By decision dated February 20, 2007, the Office denied the claim. It determined that appellant failed to submit medical evidence providing a diagnosed condition resulting from the December 27, 2007 work incident.

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 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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ 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.⁶

ANALYSIS

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established by medical evidence.⁷ Appellant

¹ 5 U.S.C. §§ 8101-8193.

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

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

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

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁶ *Id.*

⁷ *John J. Carlone*, *supra* note 4.

has not submitted rationalized, probative medical evidence to establish that the employment incident on December 27, 2007 caused a personal injury and resultant disability.

In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸

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 her condition was caused, precipitated or aggravated by his employment is 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, she failed to submit such evidence. Accordingly, as appellant has failed to submit any probative medical evidence establishing that she sustained a cervical injury in the performance of duty on December 27, 2007, the Office properly denied her claim for compensation. The Board will affirm the February 20, 2008 decision.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a cervical injury in the performance of duty on December 27, 2007.

⁸ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 6, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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