United States Department of Labor
Employees' Compensation Appeals Board

V.F., Appellant	)	
and	)	**Docket No. 08-755**
	)	**Issued: September 3, 2008**
U.S. POSTAL SERVICE, WEST SEDONA POST OFFICE, Sedona, AZ, Employer	)	

Appearances:
Brett E. Blumstein, Esq., for the appellant
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 January 17, 2008 appellant filed a timely appeal from the April 17, 2007 merit decision of an Office of Workers' Compensation Programs' hearing representative, who affirmed the denial of her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case. The Board also has jurisdiction to review the Office's October 10 and December 10, 2007 nonmerit decisions denying her requests for reconsideration.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on September 20, 2006, as alleged.

FACTUAL HISTORY

On October 6, 2006 appellant, then a 47-year-old clerk, filed a claim alleging that she sustained a traumatic injury in the performance of duty on September 20, 2006. Her claim form indicated that at 2:00 p.m. she "turned quick ran into U[-]cart upright" and injured her right hip and shoulder. She stated that there were no witnesses but that she told someone about it the same day.

Appellant's acting supervisor indicated that her knowledge of the facts did not agree with appellant's statement. The employing establishment submitted appellant's clock rings for September 20, 2006, which showed that she was clocked out for lunch from 1:39 to 2:37 p.m. Appellant's coworker submitted an October 6, 2006 statement: "On September 29, 2006 [appellant] left [two] hours early to go with her boyfriend for the weekend. On Monday October 2, [2006] [she] was telling customers that she and her boyfriend went to the lake and rented a boat, but that she kept falling down. I assumed learning to water ski, she kept falling down." The employing establishment noted that the physician who completed appellant's October 6, 2006 duty status report failed to mark the "yes" box when asked whether the history of injury appellant gave that day corresponded to the history she gave on her claim form.

The Office asked appellant for additional information. On November 8, 2006 appellant responded:

> "[T]he reason my supervisor did not get written documentation is because I didn't realize how bad I was injured until I could not move without constant pain. The day I got hurt I mentioned it to my fellow employee. We work in a very small office and quite often equipment is not put away properly as in this case. There were no witnesses because there is only three of us working here and we are all in different places at different times. I did mention to my supervisor that I had hurt myself at a safety meeting and asked that she would tell the other employees to put the equipment away. When I filed the injury claim form I explained what happened to the supervisor and she said that she had done the very same thing in this office. I asked the employee that I told got hurt to write a statement and she does not want to get involved. She said that we are always getting hurt in this office. When I walked into the u/cart I was immediately in pain and the pain never stopped just kept getting worse. No other injuries other than this one. I have been trying to get the statement from my doctor but he's waiting to get the MRI (magnetic resonance imaging) from the hospital that will follow as soon as I get it."

On October 26, 2006 Dr. Bradley D. Williams, an orthopedic surgeon, reported that appellant's pain started on September 20, 2006 when she fell onto some equipment at work. She also had right hip pain. Appellant stated that this had happened before, but this time "it really feels bad." She stated that she took hydrocodone when she cannot handle the pain. Appellant stated that the pain woke her at night, hurt almost all the time and interfered with her activities. She stated that she was usually very active, but it was difficult to use her arm at shoulder level. Dr. Williams diagnosed right shoulder pain with palpable clicking, intra-articular lesion. He noted that appellant had impingement and biceps tendinitis of the right shoulder. Dr. Williams

also noted either a Sartorius type strain or direct blow to the right hip with some hip bursitis of the greater tuberosity.

A November 3, 2006 MRI scan report found a nondisplaced superior labrum tear in the right shoulder, small to moderate joint effusion and mild supraspinatus tendinitis. An MRI scan of the right hip was normal.

In a decision dated November 24, 2006, the Office denied appellant's claim for compensation. It found that the evidence was insufficient to establish that she experienced the claimed event at the time, place and in the manner alleged. Due to inconsistencies in the factual evidence, the Office found that an injury was not demonstrated.

The record shows a tentative surgery date of November 29, 2006. On December 14, 2006 appellant requested a review of the written record by an Office hearing representative. She submitted the following statement dated December 2006:

> "I work in a very small office and space is very limited in my work area in the back. Other workers stack the U carts in the middle of my area. After lunch every day I work in this area. I was being called up to the front window to relieve the other workers for lunch, it was approximately 3 pm, and I turned quickly to head up front and ran into the end cart with my right side. It knocked the wind out of me and there was a lot of pain. Those carts are solid metal with a sharp edge sticking out of the end when it is upright. I caught my breath figured I get a good bruise and that it would go away and went up to the window. I had briefly mentioned that I had hit myself to my co-worker, Trinidad that I had run into the carts. The following week I had mentioned to my supervisor in a safety meeting that there was a problem with the clerks storing the u carts in my work area and that I had hit them and it was still bothering me. By October 6, 2006 I was in so much pain that I knew there was something very wrong. I tried to call into work but the supervisor wanted a note from a doctor and at that time I explained to her my situation and at that time she had me come in and fill out the CA-1 and go [to] the hospital and see the doctor. When filling out the CA-1 I explained to Mary Jo Moore the reporting supervisor what happened and she said that she had done the same thing in that office when she worked there. To further explain about the mix up in the time reported and the actual time of the incident, when I first found out that there was a problem with the CA-1 I tried to get a copy of it from Rene Fowler, and did not receive it until after I received this notice so when you were talking to me on the phone I did not know that the supervisor had put a 2 in for the time of incident so I was confused what the problem was. I have since spoken with Mary Jo Moore and explained the mix up in the time that was reported and I have submitted a statement from her explaining what was actually reported."

Appellant added that she was on leave September 18, 2006 for a medical procedure and took September 19, 2006 as a day of recovery. She stated that she had not skied in years and that she could not remember the last time she fell down "so I don't know where [my coworker] got her information from or why she would submit such an incriminating document."

Appellant submitted the report of injury she provided to her physician on October 6, 2006. The report of injury showed that she had an injury on September 20, 2006 at 3:00 p.m. when she "was at my computer and I turned around into an upright U-cart and ran into it hurting my arm and shoulder and hip."

On March 1, 2007 the customer service supervisor wrote the following:

> "I was giving a safety talk on housekeeping and [appellant] mentioned that the U-carts had been stored near the computer desk and she felt they should n[o]t be stored there. She told me that a few days previously she had gotten up from the computer desk to go to the front counter and had run into the U-carts. [Appellant] did not indicate that she was injured by this incident. She told me this to let me know there was a hazard with the current location of the U-carts and requested that they be stored in another location. The safety talk had prompted her telling me this. I talked to the other clerks in the office and asked them to store the U-carts elsewhere, which they did. I heard no more about this until some time later when she reported this as an accident to Mary Jo Moore.
>
> "The location of the U-carts was approximately two feet from the chair [appellant] was sitting in, in the direction opposite that which she needed to go to get to the window area. She had to pass them to get to the computer and would have seen them at that time."

The Office received a leave request showing that appellant requested two hours leave at the end of her shift on September 29, 2006. It also received a statement from Ms. Moore:

> "My name is [Ms.] Moore and I was the acting [s]upervisor that completed the accident report of [appellant]. I am also the [Ms.] Moore that [appellant] mentioned a few times in her statement and this statement is to address those facts.
>
> "(1) [Appellant] states when she was giving me the information for the accident report, that I had told her when I was the Lead SSA at the West Sedona office, that I had done the same thing. This is not true. I never had a similar accident. The U-carts were in the same place as when she claims to have run into them and I did do the same job as what is expected of her. The exception being that I was aware the U-carts were there and I simply walked around them. I never bumped into one.
>
> "(2) She further stated that I made a mistake on the time of the accident. I had put in that the time of the accident was 2:00 p.m. because she told me that she could not remember the actual time, but that it was after her lunch, which could have been anytime. When I was assigned to the position as lead SSA at West I took the last lunch which was from 1:00 to 2:00 p.m., therefore I put 2:00 p.m. because that is when I always returned from lunch.

"(3) In addition, she stated by October 6, 2006 her injury was really bothering her, but she still made no mention of it until I called her requiring medical documentation for her calling in on a Friday, prior to her [two] days off. When I called her for the documentation, she claimed that her shoulder was hurting because of an accident she had previously. I asked her if she had reported it and she said she had not. I asked her why she had not reported it, as we have instructed employee's to make sure they report all accidents timely. She claims she had mentioned it to her immediate supervisor, Laura Pratt, but did not do an official accident report. I told her that she would have to come in and we would do an official accident report and send her to the doctor to have it checked out. When we were completing the accident [report] that she told me the accident had happened on September 20, 2006, 16 days earlier.

"(4) [Appellant] also stated in her statement that she had no other injuries, yet she still has an open on the job injury for her back and 2 closed on the job injuries. All of these injuries were reported timely.

"(5) [Appellant] had been off the 16th and 17th, her regular days off and then 18th and 19th off when she had the medical procedure she spoke of in her statement, she returned on the 20th when she claims to have hurt her shoulder and failed to report it for 16 days.

"(6) [Appellant] also claimed in her statement that she was being called up to relieve one of the other clerks for lunch, but the others had already had lunch, so she would have been giving them a break. Her statements are inconsistent with the actual schedule."

On March 2, 2007 the employing establishment noted that clock rings showed that appellant continued to perform the full duties of her position and, as per her supervisor, continued to perform those duties without apparent difficulty or complaints until October 6, 2006.

In a decision dated April 17, 2007, the Office hearing representative affirmed the denial of appellant's claim. The hearing representative noted that appellant was unsure what time the injury occurred but recalled that it happened after lunch. The hearing representative noted that appellant did not seek medical care until October 6, 2006, when she was in a lot of pain and knew something was wrong. The hearing representative also noted no medical opinion on causal relationship.

On July 31, 2007 appellant, through her attorney, requested reconsideration. She submitted an undated report from Dr. Williams, who stated that he read appellant's December 2006 statement "and in my opinion, the incident where [she] ran into the U-cart is one of the causes of her injuries." He stated:

"I strongly believe that the impact with the cart did significantly contribute to both her hip and shoulder pain. First, she had no hip or shoulder problems prior to the incident. Second, labral lesions such as hers are commonly caused by

trauma that drives the shoulder backward as she describes. Third, the corners of the carts protrude exactly at the level of the greater trochanter. Trochanter bursitis or bursitis in general is commonly caused by impact injuries. Often there is somewhat of a delayed response until the inflammatory process progresses. She responded well to the local steroid injection for a short period of time, but may need aggressive physical therapy to completely resolve this complaint. Fourth, the fact that the steroid injection did not provide relief to the shoulder is very consistent with the intraarticular lesion found intraoperatively. Lastly, the intraarticular clicking found at the initial exam as well as the positive resisted supination external rotation test are, together, highly diagnostic of the SLAP lesion found in surgery.

"Thus, the right greater trochanter bursitis and SLAP lesion are highly consistent with the timing and mechanisms of the incident in question. That the impact caused these problems is without question."

In a decision dated October 10, 2007, the Office denied a merit review of appellant's case. It found that the medical evidence submitted was irrelevant to the question of whether the incident occurred as alleged.

On October 22, 2007 appellant, through her attorney, again requested reconsideration. She argued that Dr. Williams' new medical report was relevant to the issue of fact of injury and sufficient to warrant a merit review of her case.

In a decision dated December 10, 2007, the Office denied a merit review of appellant's case. It found that appellant submitted no relevant evidence or new or relevant argument demonstrating an error in fact or law: "She was specifically informed by the prior decision why her claim failed and she did not present any evidence to overcome the denial of her claim."

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[1] An employee seeking compensation under the Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, 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. She must also establish that such event, incident or exposure caused an injury.[2]

[1] 5 U.S.C. § 8102(a).

[2] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally Elaine Pendleton*, 40 ECAB 1143 (1989). The element of "fact of injury" consists of two components, which must be considered together: (1) Whether the claimant actually experienced the accident, untoward event or employment factor which is alleged to have occurred. This is a factual determination. (2) Whether a medical condition has been diagnosed in connection with this event. To make this determination, medical evidence is required. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2 (June 1995).

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[3]

Causal relationship is a medical issue[4] 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 of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty[6] 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.[7]

ANALYSIS

Appellant alleged that on September 20, 2006 she ran into an upright U-cart in the course of her employment. There were no witnesses, but an injury need not be confirmed by witnesses. Appellant alleges that she mentioned the incident to the customer service supervisor at a safety meeting the following week and the supervisor confirms that she was giving a safety talk on housekeeping when appellant mentioned that a few days previously "she had gotten up from the computer desk to go to the front counter and had run into the U-carts." This evidence comes from an independent source, is reasonably contemporaneous -- within several workdays of the incident in question -- and corroborates appellant's primary allegation that she ran into an upright U-cart. Appellant waited a couple of weeks to seek medical attention and file her claim, but she explained that she did not realize how badly she was injured. When she did obtain medical attention on October 6, 2006, she reported an injury on September 20, 2006 at 3:00 p.m. when

[3] *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

she was at her computer "and I turned around into a upright U-cart and ran into it hurting my arm and shoulder and hip." This is consistent with the history of injury she reported on her claim form.[8]

There remain some inconsistencies. Appellant stated that she had no other injuries, but the acting supervisor noted an open on-the-job injury for her back and two closed on-the-job injuries. She alleged that the incident occurred when she was being called up to the front window to relieve the other workers for lunch at approximately 3.00 p.m. But the employing establishment stated that the others already had lunch, so appellant would have been giving them a break. Why she was being called to the front window is ultimately immaterial. Appellant alleged that she told her supervisor at the safety meeting that she had hurt herself and that it was still bothering her. The supervisor denied this, stating that appellant never mentioned she was injured. But whether the incident occurred and whether it caused an injury are different matters. Appellant also alleged that when she filed her claim form the acting supervisor told her that she had done the very same thing when she worked in that office. But the acting supervisor denied this, stating that she never bumped into a U-cart. There is also the suggestion from a coworker that appellant might have injured herself the weekend before she filed her claim. Appellant took off work early on Friday and, according to the coworker, went to the lake for the weekend. The coworker stated that on the following Monday, four days before she filed her claim for compensation, appellant was telling customers that she and her boyfriend had rented a boat and that she kept falling down. It was the coworker who assumed that appellant was falling down learning to ski. But appellant denied this, stating that she had not skied in years and that she could not remember the last time she fell down.

These questions lie at the periphery of appellant's claim and do not raise serious questions about her primary allegation that she ran into an upright U-cart on September 20, 2006. The Board therefore finds that the weight of the factual evidence establishes the incident. Appellant has met her burden to establish that she experienced a specific incident occurring at the time, place and in the manner alleged.

The question therefore is whether this incident caused an injury.[9] Appellant submitted an undated narrative medical opinion on causal relationship from Dr. Williams, her orthopedic surgeon. But because the Office denied her claim on the grounds that she did not establish the first component of "fact of injury," it never reached the second component and never reviewed the medical evidence she submitted to support her claim. The Board will therefore set aside the Office hearing representative's April 17, 2007 decision and will remand the case to the Office for

[8] Ms. Moore, the acting supervisor who helped complete appellant's claim form, explained that appellant could not remember the actual time of the incident but that it was after lunch. It was Ms. Moore who reported 2.00 p.m. on the claim form because that was when she, Ms. Moore, had always returned from lunch. Clock rings for September 20, 2006, the October 6, 2006 duty status report that did not confirm the history of injury and the later medical history of "falling" onto or into U-carts do not raise serious questions about whether the incident occurred as alleged.

[9] A "traumatic injury" means a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

a review of the medical evidence. The Office shall make a finding on whether the medical opinion evidence is sufficient to establish that the September 20, 2006 work incident caused appellant's diagnosed right shoulder or hip condition and shall issue an appropriate final decision on her entitlement to compensation. Because the Office will be reviewing the merits of appellant's claim on remand, the Office decisions denying reconsideration are moot.

CONCLUSION

The Board finds that this case is not in posture for decision. The weight of the factual evidence establishes that the incident occurred as alleged. The Office must now determine whether the medical opinion evidence establishes that this incident caused an injury.

ORDER

IT IS HEREBY ORDERED THAT the December 10, October 10 and April 17, 2007 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further action consistent with this opinion.

Issued: September 3, 2008
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