

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

P.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cincinnati, OH, Employer**

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**Docket No. 08-931
Issued: September 8, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 8, 2008 appellant filed a timely appeal from June 27 and November 15, 2007 decisions of the Office of Workers' Compensation Programs that denied her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty.

FACTUAL HISTORY

On September 23, 2006 appellant, then a 55-year-old clerk, filed a claim for a recurrence of disability which she stated occurred on September 19, 2006.¹ She attributed her symptoms to

¹ The claim was eventually developed as a new traumatic injury claim, No. 092082277.

cold air in the work area, which she asserted had aggravated a previous back condition. Appellant stopped work on September 19, 2006 and returned on September 23, 2006.

In support of her claim, appellant submitted September 19, 2006 discharge instructions from Good Samaritan Hospital, instructing her to remain off work for 72 hours and refrain from lifting over 10 pounds. The discharge notes indicated that appellant was treated by Dr. Michael Bain, Board-certified in emergency medicine, and diagnosed with nontraumatic low back pain. In a September 19, 2006 emergency room report, Dr. Bain noted that appellant presented with a history of low back pain and herniated discs but “no history of recent injury.” He diagnosed lumbar strain. Appellant also provided a September 19, 2006 note signed by Dr. David Evans, a resident, listing appellant’s history of herniated discs and stating that appellant attributed her current symptoms to cold air blowing on her at work.

In a September 20, 2006 report, Dr. Dyatra Mitchell, a Board-certified internist, diagnosed a flare-up of chronic low back pain. He noted that appellant reported her symptoms were aggravated by cold air, lifting and climbing.

By correspondence dated October 5, 2006, the Office advised appellant that it would not pursue the matter as a claim for recurrence of disability for Office File No. 090446908, and noted that benefits under that claim had been terminated in 2004. On October 20, 2006 appellant asserted that her condition was permanent and ongoing and requested that the Office reimburse her medical expenses. On January 8, 2007 she requested that the Office change her claim from a claim for recurrence of a medical condition to a claim for a new traumatic injury.

In a February 28, 2007 report, Dr. Mitchell explained that appellant had chronic back pain with occasional flare-ups, one of which occurred at work on September 16, 2006. He noted that appellant had not undergone any recent diagnostic testing regarding her low back pain.

On February 28, 2007 appellant reiterated that cold air blew on her from a vent situated above her desk. She asserted that the cold air caused her back to lock up, causing pain and numbness in her right leg. Appellant also noted that her supervisor had filed the wrong paperwork and explained that the claim should have been for a traumatic injury.

By correspondence dated May 22, 2007, the Office requested additional information concerning appellant’s traumatic injury claim.

In a June 6, 2007 statement, appellant reiterated that she experienced severe low back pain and stiffness which she attributed to cold air blowing down from a vent situated directly above her desk. She provided an October 5, 2004 work order request from the employing establishment asking that plastic be placed on a window and that a reflector be placed on a vent. A June 4, 2007 witness statement from Anthony Walker of the employing establishment stated that he observed appellant leaving for the hospital on September 19, 2006 due to cold air in her work area, which he asserted caused her “back to lock-up and caused severe back pain.” Appellant also submitted a June 4, 2007 witness statement from supervisor, Barbara Harris, who stated that appellant experienced a “job-related injury,” specifically, lower back pain “from cold air blowing down on her.” She also provided October 4, 2003 and October 5, 2004 hazard reports from the employing establishment. On October 4, 2003 the employing establishment

noted that cold air was blowing down on appellant from a vent above her work space, causing low back and leg pain. It recommended that the air be turned down and a reflector installed on the vents so that air could be directed away from appellant. On October 5, 2004 the employing establishment noted that appellant was advised to dress appropriately for her work space.

By decision dated June 27, 2007, the Office denied appellant's traumatic injury claim on the grounds that the medical evidence of record was insufficient to establish that her diagnosed condition was causally related to the established work-related events.

On July 21, 2007 Dr. Mitchell explained that a chart review indicated that appellant's back condition was aggravated by cold air, heavy lifting, pushing and pulling. He noted that appellant's previous neurosurgeon noted that appellant reported stiffness and discomfort due to cool air from air conditioning units. Dr. Mitchell explained that appellant had periodically reported episodes of exacerbation after being exposed to cold air over the years and that she had been exposed to cold air and experienced a flare-up at work when she went to the emergency room in September 2006.

By correspondence dated July 21, 2007, appellant requested a review of the written record.

By decision dated November 15, 2007, an Office hearing representative affirmed the denial of appellant's traumatic injury claim finding that she did establish that her diagnosed condition was causally related to the accepted work-related events.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.³ 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.⁴

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.⁵ Second, the

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

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 his or her claimed injury and his or her employment.⁷ To establish a causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, states whether the employment injury caused or aggravated appellant's diagnosed conditions and presents medical rationale in support of his or her opinion.⁸

ANALYSIS

The Board finds that appellant has established that she sat beneath a vent at work and that air blew from a nearby vent. However, she has not met her burden of proof in establishing that cold air blowing from the vent caused or aggravated her diagnosed lumbar condition.

In her initial claim, appellant stated that cold air from a vent caused pain and stiffness in her lower back and right leg. She reported to Good Samaritan Hospital for treatment on September 19, 2006. Dr. Bain of Good Samaritan Hospital diagnosed appellant with a lumbar strain but did not address causation or mention her complaint of cold air. He also noted that appellant had no "history of recent injury." The Board has found that medical evidence which does not address causal relationship is of no probative value on that issue.⁹ Accordingly, as Dr. Bain's September 19, 2006 report and the accompanying hospital notes do not address causal relationship, they are insufficient to establish that appellant's lumbar strain was caused by her employment.

Appellant also submitted several reports from Dr. Mitchell. In September 20, 2006 notes, Dr. Mitchell diagnosed a flare-up of chronic low back pain and indicated that cold air was among several factors which exacerbated appellant's symptoms. On February 28, 2007 he stated that appellant experienced a flare-up at work, but did not explain what caused the flare-up. In a July 21, 2007 report, Dr. Mitchell stated that after reviewing appellant's chart he found that cold air was a factor that exacerbated her low back condition and noted that she had periodically noted that cold air exacerbated her back pain. The Board notes that generally, findings on examination are necessary to establish causal relationship. A physician's opinion on causal relationship which consists of merely restating the employee's complaints are insufficient to establish a claim.¹⁰ Dr. Mitchell noted appellant's belief concerning the cause of her condition

⁶ *Id.*

⁷ *Donald W. Long*, 41 ECAB 142 (1989).

⁸ *Id.*

⁹ *See A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ *William A. Archer*, 55 ECAB 674 (2004); *see also Dennis M. Mascarenas*, 49 ECAB 215 (1997).

and stated that cold air was one of several exacerbating factors. However, he did not provide a reasoned opinion explaining how air blowing from a vent above her desk would cause or aggravate her preexisting back condition. Although Dr. Mitchell general supported causal relationship, stating that appellant's flare-up occurred at work, he did not give sufficient explanation or physical examination findings to establish that her diagnosed lumbar strain was causally related to her exposure of September 19, 2006. Without further discussion and rationale¹¹ explaining how air blowing from the vent caused or aggravated the diagnosed condition, the Board finds that the medical evidence is insufficient to establish appellant's claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the November 15 and June 27, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 8, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹¹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).