# /United States Department of Labor
# Employees' Compensation Appeals Board

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| **J.A., Appellant** | ) | |
| **and** | ) | **Docket No. 08-1061** |
| | ) | **Issued: September 24, 2008** |
| **DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Honolulu, HI, 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
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

### ***JURISDICTION***

On February 26, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' February 13, 2008 merit decision, denying her claim that she sustained an employment-related injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on October 14, 2007.

### ***FACTUAL HISTORY***

On October 15, 2007 appellant, a 25-year-old, eight months' pregnant, transportation security officer (screener), filed a traumatic injury claim alleging that she developed stomach cramps on that date as a result of lifting baggage on October 14, 2007. She stated that she was being assisted by coworker, Chris Hadden, with bags over 25 pounds.

In a statement dated October 15, 2007, supervisor Manjonell Agoto indicated that, on the date in question, he observed appellant lift "only lighter bags from the floor to the belt or onto the physical search table." He noted that other screeners assisted her in lifting the heavier bags and that she did not show any discomfort or report any injury during the time she was under his supervision.

In an October 15, 2007 statement, Mr. Hadden related that on October 14, 2007 he assisted appellant with lifting heavy bags. Appellant told him that the bags she placed on the table were not heavy.

Appellant submitted a November 19, 2007 duty status report from Dr. Susan Vicenti, a Board-certified obstetrician and gynecologist, reflecting that she experienced preterm labor on October 14, 2007. In response to the question as to how the injury occurred, Dr. Vicenti stated, "Not injury -- preterm labor."

On January 8, 2008 the Office informed appellant that the information submitted was insufficient to establish that she had actually experienced an employment factor or incident alleged to have caused an injury. It further noted that appellant had provided no rationalized medical opinion explaining how the alleged incident caused a diagnosed condition. Appellant was advised to submit further factual evidence, including witness statements, supporting the fact of injury and a medical report with a diagnosis and an opinion as to the cause of the diagnosed condition.

Appellant submitted a January 29, 2008 narrative report from Dr. Vicenti, who delivered her baby on December 10, 2007. Dr. Vicenti stated that she was "not aware of any injury," but that appellant was unable to continue working due to premature contractions. She indicated that "some women develop preterm labor that is exacerbated by working."

By decision dated February 13, 2008, the Office denied appellant's claim that she sustained an employment-related injury on November 14, 2007. It found that the evidence submitted by appellant was insufficient to establish that the events claimed actually occurred as alleged. The Office further determined that the medical evidence did not contain a diagnosed condition that was causally related to the claimed incident.

## ***LEGAL PRECEDENT***

An employee who claims benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[2] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[3] An

[1] 5 U.S.C. §§ 8101-8193.

[2] *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

[3] *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr*., 35 ECAB 1175, 1179 (1984).

employee has not met her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[4] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[5] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[6]

If a claimant establishes that she actually experienced the employment incident at the time, place and in the manner alleged, she must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7] The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[8] An award of compensation may not be based on appellant's belief of causal relationship.[9] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[10] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[11]

Causal relationship is a medical issue 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 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 established incident or factor of employment.[12]

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[4] *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[5] *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

[6] *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

[7] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[8] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[9] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[10] *Id.*

[11] 20 C.F.R. § 10.303(a).

[12] *John W. Montoya*, 54 ECAB 306 (2003).

## ***ANALYSIS***

Appellant alleged that she developed stomach cramps as a result of lifting baggage on October 14, 2007. The Office denied appellant's claim on the grounds that she did not establish the occurrence of the employment incident as alleged. It further determined that the medical evidence did not contain a diagnosed condition that was causally related to the claimed incident.

The Board finds that appellant established the occurrence of an employment incident on October 14, 2007 when she lifted baggage in her capacity as a security screener. The record supports appellant's statement that she lifted bags and was assisted by coworker, Mr. Hadden, with heavy bags over 25 pounds. Supervisor Agoto indicated that, on the date in question, he observed appellant lift lighter bags from the floor to the belt or onto the physical search table and noted that other screeners assisted her in lifting the heavier bags. Mr. Hadden related that on October 14, 2007 he assisted appellant with lifting heavy bags and that the bags she placed on the table were not heavy. Appellant did not claim that her injury resulted from lifting heavy bags. Rather, she contended that her preterm labor was caused by the simple act of lifting baggage. There are not such inconsistencies in the evidence as to cast serious doubt upon the validity of appellant's claim. Appellant's claim that she lifted baggage in the course of her employment on November 14, 2007 has not been refuted by strong or persuasive evidence.[13]

Although appellant has established the occurrence of an employment incident on October 14, 2007 when she lifted baggage, she did not submit sufficient medical evidence to establish that she sustained an injury due to this incident. The medical evidence presented does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated a specific medical condition or disability. Therefore, appellant has failed to satisfy her burden of proof.

Medical evidence of record consists of reports from Dr. Vicenti whose November 19, 2007 duty status report does not support appellant's claim. Although the report reflects that appellant experienced preterm labor on October 14, 2007, Dr. Vicenti indicated that appellant had not sustained an injury. Moreover, the report does not contain a complete factual or medical history or an opinion on causal relationship. Therefore, it is of limited probative value.[14] On January 29, 2008 Dr. Vicenti stated that she was "not aware of any injury," but that appellant was unable to continue working due to premature contractions. She stated that "some women develop preterm labor that is exacerbated by working." Although Dr. Vicenti implied that appellant's employment duties may have contributed to preterm labor, her report is speculative at best and does not contain a definitive opinion as to the cause of her condition. Therefore, it is of diminished probative value. As the medical evidence of record does not contain a rationalized medical opinion explaining how the accepted events of October 14, 2007 caused or aggravated any medical condition or disability, appellant has failed to satisfy her burden of proof.

[13] *See supra* notes 4 through 7 and accompanying text.

[14] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that 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).

Appellant expressed her belief that her preterm labor condition resulted from the October 14, 2007 employment incident. However, 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.[15] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[16] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the work-related incident is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how her claimed preterm labor condition was caused or aggravated by her employment, she has not met her burden of proof to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment.

## ***CONCLUSION***

The Board finds that, although appellant established the occurrence of an employment incident on October 14, 2007, she did not submit sufficient medical evidence to meet her burden of proof to establish that she sustained an injury in the performance of duty on that date.

[15] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[16] *Id.*

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' February 13, 2008 decision is affirmed as modified to reflect that appellant established the occurrence of an employment incident on October 14, 2007, but did not submit sufficient medical evidence to show that she sustained an injury due to the incident.

Issued: September 24, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board