

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

V.L., Appellant)

and)

DEPARTMENT OF AGRICULTURE, FARM)
SERVICE, Montgomery, AL, Employer)

**Docket No. 08-2124
Issued: April 13, 2009**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 29, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 1, 2008, denying her claim for compensation. Pursuant to 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 an injury in the performance of duty on April 12, 2007.

FACTUAL HISTORY

On April 12, 2007 appellant, then a 53-year-old purchasing agent, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained injuries when she tripped over a coat rack. She indicated that her hands, shoulder and part of her face landed on the floor.

In a narrative statement dated October 13, 2007, appellant noted that after she fell she started limping and had pain in her right leg. The pain stopped after the second day but returned

after carrying a shredder at work in June 2007.¹ According to appellant, in October 2007 she had pain when an emergency room physician pressed her sciatic nerve. In a December 10, 2007 statement, she reported that she did not seek immediate medical treatment as she thought she would get better.

In a November 16, 2007 report, Dr. Jeffrey Pirofsky, an osteopath, noted in his history a slip and fall in April 2007 and another injury when appellant was carrying a paper shredder. He diagnosed lumbago, lumbar radiculopathy and lumbar spondylosis/arthritis. Dr. Pirofsky stated that it was highly unlikely that pressing on her back would cause a sciatic injury, but appellant would accept no other explanation. He stated that it would also be difficult to explain her pain as a result of lifting a shredder.

By decision dated January 11, 2008, the Office denied the claim for compensation. It found the medical evidence was not sufficient to establish an injury in the performance of duty on April 12, 2007.

Appellant requested a telephonic hearing, which was held on May 12, 2008. In a report dated January 2, 2008, Dr. Roger Glymph, an internist, indicated that diagnostic tests showed lumbar degenerative disc disease, and appellant was being treated by a neurologist for parasthesias in the legs. He provided a history of a slip and fall on May 3, 2007, with debilitating back pain, stiffness and muscle spasms, improving after a few weeks and then aggravation from carrying a heavy object about a month later. Dr. Glymph concluded that appellant had “an underlying degenerative musculoskeletal problem in her lower back which was made significantly worse by apparent on-the-job injuries.”

By decision dated July 1, 2008, the hearing representative affirmed the January 11, 2008 decision, finding that the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act provides for the payment of compensation for “the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”² The phrase “sustained while in the performance of duty” in the Act is regarded as the equivalent of the commonly found requisite in workers’ compensation law of “arising out of and in the course of employment.”³ An employee seeking benefits under the Act has the burden of establishing that he or she sustained an injury while in the performance of duty.⁴ In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether “fact of injury” has been established. Generally “fact of injury” consists of two components which must be considered in

¹ The record indicates the shredder incident was May 4, 2007 and appellant filed a claim for injury under OWCP File No. xxxxxx895.

² 5 U.S.C. § 8102(a).

³ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁴ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.⁵

The Office's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.⁶ In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.⁷

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

The Office did not dispute that appellant tripped over a coat rack on April 12, 2007 and fell to the floor while in the course of employment. To establish her claim that she sustained an injury due to this incident, appellant must submit medical evidence with a rationalized opinion on causal relationship between a diagnosed condition and the April 12, 2007 employment incident. However, there is no probative medical evidence sufficient to meet appellant's burden of proof.

Dr. Pirofsky did not provide an opinion on causal relationship. Dr. Glymph did not provide a complete and accurate factual and medical background. He reported only a brief and general description of the April 12, 2007 incident, did not accurately describe the date of the incident or otherwise provide an accurate factual and medical history. Dr. Glymph referred to improvement after a few weeks, but appellant stated that she had no pain after two days. The opinion that a degenerative condition was aggravated by "on-the-job" injuries is not supported by medical rationale and is of little probative value to the present claim. It is appellant's burden of proof to establish an injury in the performance of duty on April 12, 2007. The Board finds that appellant did not meet her burden of proof in this case.

⁵ See *John J. Carlone*, 41 ECAB 354, 357 (1989).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

⁷ *Id.*

⁸ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an injury in the performance of duty on April 12, 2007.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 1 and January 11, 2008 are affirmed.

Issued: April 13, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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