United States Department of Labor
Employees' Compensation Appeals Board

E.T., Appellant	)	
and	)	**Docket No. 08-1932**
	)	**Issued: February 2, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Huntsville, AL, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 3, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' March 31, 2008 decision 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 met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on November 17, 2006.

FACTUAL HISTORY

On February 23, 2007 appellant, then a 55-year-old mail processor clerk, filed a traumatic injury claim alleging that, on November 17, 2006, she sustained pain and weakness in her left forearm and elbow after a metal bar fell and struck her as she was checking the upper level of a general purpose mail container (GPMC). She stopped work on December 26, 2006. The employing establishment challenged appellant's claim.

In an undated statement, appellant alleged that on November 17, 2006 a bar fell and struck her on the inside of the left forearm and bounced on the inside of the elbow. She noted that there was no continued pain except for the initial impact of the bar. On December 26, 2006 appellant's arm started hurting and she had a problem lifting. She saw her doctor subsequently that morning. In a February 25, 2007 statement, the employing establishment noted that on December 30, 2006 appellant was asked about her request for sick leave from December 30, 2006 to January 1, 2007. The employing establishment indicated that she reported being treated by a physician, on December 26, 2006, for left arm pain due to an injury at work on November 17, 2006 involving a GPMC. The employing establishment advised that, at that time, appellant did not want to file a workers' compensation claim.

In a December 26, 2006 work restriction form, Dr. Ronald Frye, Board-certified in family medicine, indicated that appellant had left arm pain and that she could return to work that day but could not lift more than five pounds. In a February 8, 2007 work restriction form, Dr. H. Cobb Alexander, a Board-certified orthopedic surgeon, diagnosed pain of the left upper extremity and advised that appellant could lift up to 10 to 15 pounds. In a duty status report of the same date, he checked a box "yes" indicating that the history of the injury provided by appellant corresponded to the injury as described by appellant's supervisor. The history provided on the form report indicated that a bar on a GPMC fell and struck her left forearm and elbow. Dr. Alexander diagnosed pain of the left upper extremity.

On March 2, 2007 the Office advised appellant of the factual and medical evidence needed to establish her claim and allowed 30 days to submit such evidence. In response, appellant submitted a March 22, 2007 work restriction from Dr. Alexander, who diagnosed elbow pain and indicated that she could lift up to 15 pounds and no lifting overhead through April 15, 2007.

In an April 3, 2007 decision, the Office denied appellant's claim on the grounds that there was insufficient evidence to establish that she sustained an injury as alleged. It found that the evidence did not establish that the events occurred as alleged or that the medical evidence related a diagnosis to the claimed events.

Appellant subsequently submitted a February 18, 2007 work restriction from Dr. Alexander, who diagnosed pain in the left upper extremity and restricted lifting to 10 to 15 pounds.

On February 22, 2008 appellant requested reconsideration. In an April 30, 2007 report, Dr. Alexander stated that appellant injured her left upper extremity "around November 17th [2006] while at work" when a metal bar fell across the anterior aspect of her arm. He stated that it was "a little sore" at that time and appellant thought little of it. However, appellant had subsequent cycles of elbow soreness. Dr. Alexander advised that there was no consistent pain or radicular symptoms. He suspected that appellant had an injury to her brachioradialis muscle. Dr. Alexander noted that appellant was on light duty from January 30 to April 30, 2007 and that she was released to regular duty as of May 1, 2007.

Appellant also submitted a statement noting that she did not initially report the injury within 30 days because there was no weakness and the pain lasted only a few minutes upon

impact of the metal bar. Her condition was fine from November 17 through December 26, 2006. On the morning of December 26, 2006 appellant's pain and weakness became worse and she could not hold trays of mail.

In a March 31, 2008 decision, the Office denied modification of the April 3, 2007 decision on the grounds that the medical evidence was speculative and did not support the factual evidence.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that he or she sustained an injury while in the performance of duty.[2] 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 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. An employee 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.[3] 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, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. 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 cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.[4] 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.[5]

The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[6] As part of this burden, the claimant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.[7] Causal relationship is a medical issue and the medical

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Charles B. Ward*, 38 ECAB 667 (1987).

[4] *Merton J. Sills*, 39 ECAB 572, 575 (1988). *See also Paul Foster*, 56 ECAB 208 (2004).

[5] *Thelma S. Buffington*, 34 ECAB 104 (1982).

[6] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[7] *Joseph T. Gulla*, 36 ECAB 516 (1985).

evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[8]

ANALYSIS

The record supports that on November 17, 2006 appellant was struck in the left forearm and elbow by a metal bar. Although the Office found that the evidence did not establish the November 17, 2006 incident occurred, the Board finds that appellant provided a consistent history of the incident and the reports from Dr. Cobb also provided a history that is generally consistent with that given by appellant. Appellant also provided a reasonable explanation for why she delayed in filing her claim, indicating that initial symptoms were brief but then worsened on December 26, 2006. The Board finds that there is no strong or persuasive evidence to refute that the November 17, 2006 incident occurred as alleged.

Although appellant has established that the November 17, 2006 incident occurred as alleged, she not established the second component of fact of injury by submitting sufficient medical evidence to establish that the November 17, 2006 incident caused or aggravated a diagnosed medical condition.

In the April 30, 2007 treatment note, Dr. Alexander opined that appellant injured her left upper extremity on November 17, 2006 at work when a metal bar fell across the anterior aspect of her left arm. He noted that the pain was initially minor but she began experiencing cycles of left elbow pain. Dr. Alexander opined that appellant injured her brachioradialis muscle. Apart from describing left elbow pain, he did not provide a firm diagnosis of appellant's condition. Dr. Alexander's opinion on causal relationship does not contain sufficient medical rationale explaining the basis by which a bar falling onto appellant's left arm would cause a particular injury to the brachioradialis muscle. Because he did not provide medical rationale explaining why or how appellant's forearm or elbow injury were caused by the work-related incident, this report is insufficient to establish appellant's claim.

In the February 8, 2007 duty status report, Dr. Alexander indicated through a checkmark for "yes" that the history of the injury as described on the form report corresponded to the injury as described by the employing establishment. To the extent that this may be viewed as support for causal relationship, checking a box "yes" is insufficient to establish a causal relationship in the absence of medical rationale, which explains the reasons for the physician's opinion. In the work restrictions dated February 8 to March 22, 2007, Dr. Alexander diagnosed pain of the left upper extremity and elbow. However, pain is a symptom, not a compensable medical diagnosis.[9]

[8] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[9] *C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008).

Furthermore, Dr. Alexander did not address the cause of appellant's condition or mention the November 17, 2006 work incident.[10] Similarly, the December 26, 2006 work restriction report from Dr. Frye is insufficient as the physician does not address causal relationship between the November 17, 2006 incident and any diagnosed medical condition.

Consequently, the medical evidence is insufficient to establish that the November 17, 2006 work incident caused or aggravated a diagnosed medical condition. Thus, the Board finds that the Office properly denied appellant's claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury on November 17, 2006 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated March 31, 2008 is affirmed.

Issued: February 2, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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