United States Department of Labor
Employees' Compensation Appeals Board

L.L., Appellant	)	
and	)	**Docket No. 08-2305**
	)	**Issued: February 19, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Gaithersburg, MD, Employer	)	

Appearances:
Appellant, pro se
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 August 19, 2008 appellant filed a timely appeal from the June 19, 2008 merit decision of the Office of Workers' Compensation Programs which denied 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 to establish that she sustained an injury in the performance of duty on April 1, 2008.

FACTUAL HISTORY

On April 3, 2008 appellant, then a 57-year-old mail processor, filed a traumatic injury claim alleging that, on April 1, 2008, she sustained injury to her neck and left arm while taking rubber bands off mail and placing letters in a tray. She submitted a form signed by her supervisor, noting that on April 1, 2008 she complained of pain in her left hand and arm up to her neck. In an accompanying employing establishment health clinic note dated April 3, 2008, a

nurse advised that appellant had pain in her left upper extremity and possible cervical radiculopathy. Appellant also submitted an April 3, 2008 duty restriction form from Dr. Ruinjin Yao, a Board-certified physiatrist, who found severe limited range of motion in the left shoulder and severe tenderness of the left upper extremity that was caused by taking rubber bands off mail and placing in a tray. Dr. Yao placed appellant on light duty. Appellant also submitted prescription forms from a Dr. Deborah Shemilz, who noted that appellant was off work until April 6, 2008. On April 15, 2008 Dr. Yao indicated that he treated appellant April 7 through May 7, 2008 for acute/severe left shoulder and neck pain.

By letter dated May 9, 2008, the Office advised appellant that the information submitted was insufficient to establish her claim. It requested that she submit further evidence. In response, appellant submitted a rehabilitation prescription from Dr. Yao ordering continuing treatment for acupuncture, therapeutic exercise and manual therapy. She also submitted employing establishment forms indicating that, on April 1, 2008, she experienced pain while taking rubber bands off bundles of mail and placing them into trays.

By decision dated June 19, 2008, the Office denied appellant's claim, finding that she had not establish that she sustained an injury on April 1, 2008 as alleged. It noted that the evidence submitted was insufficient to establish that the incident occurred as alleged. The Office further denied appellant's claim as there was no medical evidence that provided a diagnosis which could be connected 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 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

[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).

[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).

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]

ANALYSIS

Appellant alleged that she sustained injury to her left hand, arm and neck as a result of taking rubber bands off mail and placing letters in a tray on April 1, 2008. The Office denied her 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 establish a diagnosed condition causally related to the claimed incident.

The Board finds that appellant established the occurrence of an employment incident on April 1, 2008 at the time, place and in the manner alleged. Appellant alleged that, while taking

---

[6] *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Burffington*, 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 2.802.2a (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).

rubber bands off mail and placing letters into a tray, she experienced pain to her left hand, arm and neck. The employing establishment submitted evidence acknowledging the same history of injury on that date. Appellant sought medical treatment on April 3, 2008, shortly following the alleged incident. There are no inconsistencies in the evidence as to cast serious doubt upon the validity of appellant's claim. The record establishes that she was taking rubber bands off mail and placing it into trays on April 1, 2008. This incident is not refuted by strong or persuasive evidence.[13] Accordingly, appellant established the occurrence of an employment incident on April 1, 2008.

Although appellant has established the occurrence of the April 1, 2008 employment incident, 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.

There is no indication that any physician made a firm diagnosis with regard to appellant's physical condition. Dr. Yao noted limited range of motion in the left shoulder and tenderness of the left upper extremity on the duty restriction form. He advised that he treated appellant for acute/severe left shoulder and neck pain. However these reports fail to provide a specific diagnosis. The Board has held that pain is a symptom and the mere diagnosis of pain does not constitute a basis for the payment of compensation.[14] Dr. Yao did not explain how appellant's physical condition was caused by the accepted work incident. He did not provide findings on examination or indicate that his opinion was based on a review of a complete factual and medical background. Appellant also submitted copies of prescriptions and a note excusing her from work from Dr. Shemilz; however, this evidence does not provide a rationalized opinion on causal relationship. The nurse's notes are not probative as a nurse is not a physician as defined under the Act, and therefore not competent to render a medical opinion.[15]

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.[16] 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.[17] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. As there is no probative, rationalized medical evidence establishing a medical condition causally related to her federal employment, appellant has not met her burden of proof.

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

[14] *Robert Broome*, 55 ECAB 339 (2004).

[15] *Roy L. Humphrey,* 57 ECAB 238 (2005).

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

[17] *Id.*

CONCLUSION

The Board finds appellant established the occurrence of an employment incident on April 1, 2008. However, she did not submit sufficient medical evidence to establish that she sustained an injury on that date.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 19, 2008 decision is affirmed as modified to reflect that appellant established the occurrence of the April 1, 2008 employment incident.

Issued: February 19, 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