

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

R.O., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, NY, Employer**

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**Docket No. 09-222
Issued: July 13, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 29, 2008 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated October 17, 2008 which denied her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merit issue of the case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a left elbow injury on September 9, 2008.

FACTUAL HISTORY

On September 12, 2008 appellant, then a 40-year-old mail handler, filed a claim alleging that on September 9, 2008 she was struck by a postal container and sustained a left elbow injury. She stopped work on September 12, 2008. The employing establishment controverted appellant's claim noting that she did not notify management of the injury until September 12, 2008 and failed to submit medical evidence to support her claim.

By letter dated September 15, 2008, the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit a physician's reasoned opinion addressing the relationship of her elbow condition and specific employment factors.

In an undated statement, appellant noted that on September 9, 2008 she was loading a "post con" into a mail truck when the container rolled toward her. She reported lifting her left arm to stop the container. The container weighed between 700 to 800 pounds and struck her left elbow. Appellant attempted to inform her supervisor of the incident but he was not at his desk. She finished her tour and advised that, the next day, her elbow was red and sore. On September 10 and 11, 2008 she was not scheduled to work and treated her elbow conservatively with ice and an ace bandage. She reported the injury to her supervisor on September 12, 2008 and sought medical treatment that day.

Appellant submitted form reports dated September 12 and 17, 2008 from Dr. Jonathan Gordon, a Board-certified orthopedic surgeon, who treated appellant for a left elbow injury which occurred on September 9, 2008. He diagnosed left elbow sprain and recommended physical therapy. Dr. Gordon found that appellant was totally disabled from September 12 to November 6, 2008. In a September 18, 2008 narrative report, he noted that appellant presented with left elbow pain. On physical examination, elbow range of motion was from 0 to 90 degrees, no varus or valgus instability, no medial or lateral joint line tenderness and the shoulder showed some range of motion deficits. He diagnosed left elbow tendinitis.

In a decision dated October 17, 2008, the Office denied appellant's claim finding that the medical evidence was not sufficient to establish that her left elbow condition was caused by the September 9, 2008 work incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.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

¹ 5 U.S.C. §§ 8101-8193.

² *Gary J. Watling*, 52 ECAB 357 (2001).

actually experienced the employment incident which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

Appellant alleged that she sustained a left elbow injury when she was struck by a postal container on September 9, 2008. The Board notes that the evidence supports that the incident occurred on September 9, 2008 as alleged. The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a left elbow injury causally related to the September 9, 2008 work incident.

On September 15, 2008 the Office advised appellant of the medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from an attending physician addressing how the September 9, 2008 work incident caused or contributed to her claimed condition.

In treatment records dated September 12 and 17, 2008, Dr. Gordon diagnosed left elbow sprain and found appellant was totally disabled from September 12 to November 6, 2008. He advised that appellant presented with left elbow pain. Dr. Gordon noted minimal findings upon physical examination of the left elbow and diagnosed left elbow tendinitis. However, these reports are insufficient to establish the claim as he did not provide a history of injury or

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Id.*

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

specifically explain how the incident at work caused her left elbow condition.⁷ Dr. Gordon did not describe the September 9, 2008 incident of a postal container striking appellant's left elbow or explain how this would cause or contribute to the diagnosed tendinitis.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.⁸ Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a left elbow injury causally related to her September 9, 2008 employment incident.⁹

ORDER

IT IS HEREBY ORDERED THAT the October 17, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁷ *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).

⁸ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).