

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

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**M.B., Appellant**

**and**

**DEPARTMENT OF AGRICULTURE,  
GOLDKIST POULTRY, Boaz, AL, Employer**

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**Docket No. 08-1751  
Issued: March 11, 2009**

*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 June 12, 2008 appellant timely appealed the Office of Workers' Compensation Programs' decisions dated November 27, 2007 and January 15, 2008, denying her claim for benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant met her burden of proof in establishing that she sustained an injury in the performance of duty on August 1, 2006.

**FACTUAL HISTORY**

On October 12, 2007 appellant, then a 59-year-old poultry inspector, filed a Form CA-1 traumatic injury claim with the Office alleging that on August 1, 2006 she fell while stepping off a line, twisting her right ankle and hitting her right arm and shoulder on the floor. She completed the Form CA-1 on August 1, 2006 and it was signed by her supervisor on August 2, 2006. Appellant submitted a statement from her employing establishment dated October 9, 2007

acknowledging receipt of her CA-1 and two witness' statements. The first statement dated August 2, 2006 from Michael Smith read: "When I saw Sue, she was sitting on the floor." The second statement from Angela Crumpler dated August 2, 2006 read: "When she stepped off line 2 station and fell to the floor, I asked if she was ok. She said she just twisted her ankle. I helped her up."

By letter dated October 19, 2007, the Office informed appellant that the information submitted with her claim was insufficient to establish that she sustained an injury on August 1, 2006. Specifically, it cited the absence of medical treatment reports, medical records and/or physician reports.

Responding to this letter, appellant submitted the medical report of Dr. Robert L. Hash II, a Board-certified neurosurgeon, dated October 24, 2007. In his report, Dr. Hash diagnosed: cervical radiculitis; degenerative disc disease; neck/cervical pain; and right shoulder pain. He stated that appellant required immediate permanent modified work. Dr. Hash concluded that the alleged condition was considered work related.

By decision dated November 27, 2007, the Office denied appellant's claim for benefits because the medical evidence did not establish that the diagnosed medical conditions were related to the established work-related event as required for coverage under the Federal Employees' Compensation Act. It found that the medical evidence did not contain a history of the injury and lacked a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

On December 18, 2007 appellant requested review of the written record. With this request, she resubmitted a copy of her CA-1. Additionally, appellant submitted a medical report of Dr. H. Cobb Alexander, a Board-certified orthopedic surgeon, dated August 14, 2007. Dr. Alexander noted that he was treating appellant following referral by Dr. Hash, for evaluation of bilateral shoulder pain. He noted that appellant previously underwent a C4-5/C5-6 fusion by Dr. Hash and that appellant's biggest present complaint was pain in her shoulders; particularly on the right side. Dr. Alexander postulated that this condition had its onset with a fall at work on August 1, 2006 when appellant landed hard on her right side after slipping at work. He stated that this incident was separate from the incident of 2004 that caused her neck injury, during which she was actually struck in the head by a falling chicken. Moreover, Dr. Alexander reported that, at the time of examination, appellant had no radicular symptoms, but that she was experiencing shoulder pain and stiffness, particularly in the right shoulder. He diagnosed right shoulder pain, impingement syndrome and SP/ST labrum tear. Dr. Alexander concluded as follows: "With her history of a fall landing on the right side of her body, this would be the cause of mechanism for a labral tear with a secondary impingement leading from relative rotator cuff atrophy in her shoulder."

Appellant also submitted an undated personal statement. She noted that, although she completed a Form CA-1 on August 1, 2006, she did not submit it to the Office; electing instead to have the form held in her personnel file. Appellant also stated that she did not know she had a shoulder tear but, rather, assumed that the pain had something to do with her previous neck injury.

By decision dated April 2, 2008, the Branch of Hearings and Review affirmed the Office's November 27, 2007 decision, stating that the evidence did not establish a causal relationship between the claimant's ankle, shoulder and arm conditions and the fall of August 1, 2006.

### **LEGAL PRECEDENT**

When an employee claims an injury in the performance of duty, he or she must submit sufficient evidence to establish a specific event, incident or exposure occurring at the time, place and in the manner alleged. The employee must also establish that such event, incident or exposure caused an "injury" as defined in the Act and its regulations.<sup>1</sup> Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by the employment conditions, is sufficient to establish causal relationship.<sup>2</sup>

The medical opinion to establish a claim must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factor identified by the employee.<sup>3</sup> The issue of whether an employee's medical condition is related to an accepted work incident is a medical question which must be answered by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>4</sup>

### **ANALYSIS**

Appellant's allegation that she twisted her ankle and hit her shoulder hard when she fell as she was getting off the line on the alleged date was corroborated by two witness' statements and by the fact that she completed the CA-1 form on the date of the alleged injury, August 1, 2006. There is no controversion that the incident occurred as alleged. The Board therefore finds that the incident occurred as alleged. However the critical issue for this claim is whether this incident caused an injury.<sup>5</sup>

Appellant's claim that her diagnosed cervical spine and neck conditions were caused by the fall of August 1, 2006 is undermined by her delay in seeking treatment for this alleged injury until August 2007, 12 months after the alleged incident. Neither she nor her physicians have explained these delays. The absence of contemporaneous evidence of injury or of any

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<sup>1</sup> *O. Paul Gregg*, 46 ECAB 624 (1995).

<sup>2</sup> *Ronald M. Cokes*, 46 ECAB 967 (1995).

<sup>3</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>4</sup> *Sandra Pruitt*, 57 ECAB 126 (2005).

<sup>5</sup> *See S.H.*, 60 ECAB \_\_\_\_ (Docket No. 08-1356, issued October 21, 2008).

subsequent bridging symptoms for months following the incident mitigate against causal relation between the incident and the current condition.<sup>6</sup>

Appellant has not met her burden of proof that she sustained an injury from the employment incident. The record contains no medical evidence contemporaneous to the employment incident. Although appellant underwent a cervical fusion in April 2007, there is no evidence of record that she sought treatment for her alleged August 2006 injury until August 2007. There is no bridging medical evidence indicating that she had complaints relative to the August 2006 incident. Neither Dr. Hash nor Dr. Alexander offer a rationalized opinion explaining how the alleged trauma to the right ankle, arm and shoulder was related to either the diagnosed cervical and neck conditions or the right shoulder pain, impingement syndrome and SP/ST labrum tear, given that appellant had no complaints requiring medical treatment for over a year.<sup>7</sup> In the current posture of the record, appellant has failed to establish that she suffered a compensable injury.

**CONCLUSION**

The Board finds that the Office properly found that appellant has not established that she sustained an injury on August 1, 2006.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 15, 2008 and November 27, 2007 are affirmed.

Issued: March 11, 2009  
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

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<sup>6</sup> *Fred Carmen*, 11 ECAB 281 (1960).

<sup>7</sup> *See Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).