United States Department of Labor
Employees' Compensation Appeals Board

N.F., Appellant	)	
and	)	**Docket No. 09-634**
	)	**Issued: October 5, 2009**
U.S. POSTAL SERVICE, REYNOLDS CORNER POST OFFICE, Toledo, OH, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 5, 2009 appellant filed a timely appeal from the December 9, 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 on October 16, 2008, as alleged.

FACTUAL HISTORY

On October 27, 2008 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim alleging that, on October 16, 2008, she developed neck and back pain after her postal vehicle was struck in the left rear while on her route.

By letter dated November 5, 2008, the Office asked appellant to submit further evidence. In response, appellant submitted a note from a physician's assistant dated October 27, 2008

ordering physical therapy for four weeks, an October 31, 2008 intake note from the physical therapist and follow-up form reports from physical therapy dated October 31 to November 21, 2008. She also submitted a Flower Hospital Emergency Center work release form, which advised that appellant was off work on October 16 to 18, 2008 but could resume work without restriction on October 20, 2008.

By decision dated December 9, 2008, the Office denied appellant's claim. It found that the evidence was sufficient to establish that the October 16, 2008 motor vehicle incident occurred as alleged. However, no medical evidence was submitted to establish a diagnosis connected to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 timely filed with the applicable time limitation period of the Act[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[5]

The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[6] The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[7] The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *See id.*

[7] *Id.*

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.[8]

ANALYSIS

Appellant alleged that she sustained back and neck pain as a result of a motor vehicle accident on October 16, 2008 while on her delivery route. The Office accepted that the claimed incident occurred, as alleged.

However, the evidence of record is insufficient to establish that the accepted incident caused an injury. Appellant failed to submit any probative medical evidence from a physician, which provides a history of the accepted incident and attributes a diagnosis to the October 16, 2008 motor vehicle accident. The work release form from the Flower Hospital Emergency Center is not signed by a physician. Therefore, it does not constitute medical evidence relevant to establishing fact of injury. Appellant also submitted materials from a physician's assistant referring her for physical therapy. However, a physician's assistant is not a "physician" as defined under the Act.[9] Therefore, this is not probative medical evidence.[10] The physical therapy similarly not probative as a physical therapist is also not a physician under the Act.[11] Therefore, this evidence is not considered competent medical evidence for the purpose of determining appellant's entitlement to benefits.[12]

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.[13] 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.[14] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. There is no probative, rationalized medical evidence from a physician establishing a medical condition causally related to her accepted incident. Appellant has not met her burden of proof.

The Board notes that appellant has submitted new evidence following issuance of the Office's December 9, 2008 decision. The Board, however, has no jurisdiction to review this evidence for the first time on appeal.[15]

---

[8] *Id.*

[9] 5 U.S.C. § 8181(2); *see also Allen C. Hundley*, 53 ECAB 551 (2002); *Lyle E. Dayberry*, 49 ECAB 369 (1998).

[10] *See David P. Sawchuk*, 57 ECAB 316 (2006); *Robert J. Krstyen*, 44 ECAB 277, 229 (1992).

[11] *See* 5 U.S.C. § 8101(2) (2006).

[12] *David P. Sawchuk, supra* note 10 at 316, 320 n.11 (2006).

[13] *See Joe T. Williams*, 44 ECAB 418, 521 (1993).

[14] *Id.*

[15] *See* 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on October 16, 2008.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 9, 2008 is affirmed.

Issued: October 5, 2009
Washington, DC

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

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

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