

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

E.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kearney, NJ, Employer**

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**Docket No. 09-503
Issued: September 1, 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 December 12, 2008 appellant filed a timely appeal of an October 22, 2008 decision of the Office of Workers' Compensation Programs 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 on May 19, 2008.

FACTUAL HISTORY

On September 18, 2008 appellant filed a traumatic injury claim alleging that on May 19, 2008 she sustained a right shoulder injury from a door at work. She did not stop work. The employing establishment controverted the claim.

A May 19, 2008 routing slip from appellant's supervisor noted that a door on a bulk mail container came down and struck appellant's right arm. The slip indicated that she did not request medical treatment.

On September 19, 2008 the Office advised appellant of the factual and medical evidence necessary to establish her claim. It allowed 30 days to submit such evidence. The Office requested a physician's report with an opinion on how the incident resulted in a diagnosed medical condition.

In an undated statement, appellant indicated that on May 19, 2008 she was working on a bulk mail container. After loading the bulk mail container with boxes, she attempted to close it when the door fell off its hinges and struck her right upper arm and shoulder. The incident caused right upper arm and shoulder swelling and bruising. Appellant's acting supervisor took her into the office and placed ice on her arm and shoulder. Appellant did not seek immediate medical attention as she feared losing her job. She subsequently saw her treating physician, who advised that she not return to work. However, appellant noted she was financially unable to miss work.

In an October 2, 2008 report, Dr. Marwan Assaleh, an internist, first treated appellant on May 29, 2008 for severe neck, upper back and right shoulder pain after a door at work fell on her right shoulder and neck. He noted that examination of appellant's cervical spine revealed tender muscles at the right side with tender supraspinatus muscle with spasm on the right. Appellant's right shoulder was painful to extension and abduction but had a complete range of motion with passive movement, though painful. Dr. Assaleh noted right elbow pain to palpation laterally and no obvious bruised area in her upper back or right shoulder. He diagnosed blunt trauma to the right upper back and shoulder with right rotator cuff syndrome, cervical spine strain and lateral epicondylitis on the right. Dr. Assaleh recommended light duty and physical therapy. He stated that a magnetic resonance imaging (MRI) scan on June 26, 2008 revealed supraspinatus tendon tendinitis, tendinopathy with probable distal focal interstitial delaminating tear and a focal partial thickness tear with small subacromial-subdeltoid bursal effusion. The MRI scan also showed biceps tendon mild tendinitis, tenosynovitis, subscapularis tendon tendinosis, tendinopathy with probable distal superficial fiber focal partial thickness tear and acromioclavicular (AC) joint hypertrophy with arthritic changes. In subsequent follow-up visits, Dr. Assaleh placed appellant on disability between September 25 and October 9, 2008. On appellant's last visit, September 28, 2008, he referred her to an orthopedic surgeon for her right shoulder.

In a decision dated October 22, 2008, the Office denied appellant's claim. It found that she experienced the May 19, 2008 incident, however, the medical evidence was insufficient to establish that the incident caused an injury to her neck or right upper extremity.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his 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; that an injury was sustained while 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

¹ 5 U.S.C. §§ 8101-8193.

and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.²

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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.³

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 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.⁴

ANALYSIS

The record reflects that on May 19, 2008 appellant was struck by the door of a bulk mail container that fell from its hinges while she was in the performance of duty. However, the medical evidence is not sufficient to establish that this incident caused or aggravated her claimed right shoulder and upper arm condition.

In an October 2, 2008 report, Dr. Assaleh noted appellant’s history of injury consisted of a door falling on her right shoulder and neck at work. He treated her 10 days following the incident. On examination, he initially diagnosed blunt trauma to the right upper back and shoulder with right rotator cuff syndrome, cervical spine strain and lateral epicondylitis on the right elbow. Although Dr. Assaleh described the May 19, 2008 employment incident and stated that appellant experienced pain, he did not adequately address how the door striking appellant’s right shoulder and neck caused or aggravated the diagnosed medical conditions. On June 26, 2008 he obtained an MRI scan and diagnosed several conditions pertaining to the shoulder region. Dr. Assaleh did not provide medical rationale to explain how the accepted incident would cause or aggravate the medical conditions noted on diagnostic testing.

The Office notified appellant of the evidence needed to establish her claim on September 19, 2008. It advised her that she needed to submit a physician’s reasoned medical explanation of how the work incident caused or contributed to her right shoulder and upper arm condition. Appellant’s burden of proof includes the submission of rationalized medical evidence

² *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *Id.*

⁴ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

addressing whether there is a causal relationship between the employee's diagnosed condition and the employment incident. Appellant did not submit a reasoned medical opinion explaining how the work incident caused or aggravated the diagnosed conditions noted by Dr. Assaleh. Consequently, the Board finds that the Office properly denied appellant's claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a traumatic injury on May 19, 2008 in the performance of duty.⁵

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated October 22, 2008 is affirmed.

Issued: September 1, 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

⁵ Appellant submitted new evidence on appeal. However, the Board may only review evidence that was in the record at the time the Office issued its final decision. 20 C.F.R. § 501.2(c).