

Appellant submitted an October 10, 2007 x-ray of the thoracic spine, an October 24, 2007 computerized tomography (CT) of the thoracic and lumbar spine, and a November 7, 2007 magnetic resonance imaging (MRI) scan of the lumbar spine. The x-ray showed moderate degenerative changes to the mid thoracic spine and questionable mild anterior wedging of a mid thoracic vertebral body. In a report dated August 27, 2007, Dr. Richard Dryer, an internist, noted appellant had lumbar surgery on October 16, 2006.

By decision dated December 18, 2007, the Office denied appellant claim for compensation. It found that the medical evidence was insufficient to meet the established claim.

Appellant requested a telephonic hearing, which was held on September 11, 2008. In a report dated August 1, 2008, Dr. Dryer stated that in a letter to him, appellant had reported an October 9, 2007 incident where she bent over a cart, picked up mail with both hands and felt a sharp pain on her right side. He stated, "The history in the medical record is different." Dr. Dryer referred to an emergency room report stating that appellant was reaching to the floor to pick up mail and Dr. Saroj Chowdhury, Board-certified in internal medicine, reported that she was lifting small boxes at work. He stated that his note of April 28, 2008, reported appellant was sitting on the toilet and turned a certain way, experiencing sharp pain in the left lateral chest that was felt to be a chest strain. Dr. Dryer further stated:

"In summary, you have chronic degenerative disc disease and arthritis. No definite surgical treatment was needed and your symptoms were treated medically. The history as reported in the record is different from what you reported and that could be problematic for your case. Because of the unclear history from different physicians and because of different stories in the medical record there is no direct linkage to a condition which would be severe and debilitating. It is difficult to state that these symptoms you described caused your medical condition because of these conflicts."

By decision dated November 18, 2008, the hearing representative affirmed the December 18, 2007 decision. She found that the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."¹ The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of an in the course of employment."² An employee seeking benefits under the Act has the burden of establishing that he or she sustained an injury while in the performance of duty.³ In order to determine whether an employee actually sustained an injury in the

¹ 5 U.S.C. § 8102(a).

² *Valerie C. Boward*, 50 ECAB 126 (1998).

³ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

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 actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.⁴

The Office’s procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.⁵ In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician’s affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.⁶

Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁷

ANALYSIS

Appellant filed a traumatic injury claim alleging that on October 9, 2007 she was reaching into a cart and sustained an injury. The Office has not disputed that an employment incident occurred on October 9, 2007. Since this is not a clear-cut traumatic injury claim, appellant must submit rationalized medical evidence establishing causal relationship between a diagnosed condition and the October 9, 2007 employment incident.

The Board finds that the record does not contain a rationalized medical opinion supporting causal relationship. An attending physician, Dr. Dryer, indicated that appellant had not initially reported to him an accurate history of the October 9, 2007 incident.⁸ The record contains a January 11, 2008 report from him that refers generally to bending and lifting mail at work, without discussing an October 9, 2007 incident. On August 1, 2008 Dr. Dryer did not

⁴ See *John J. Carlone*, 41 ECAB 354, 357 (1989).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

⁶ *Id.*

⁷ *Jennifer Atkinson*, 55 ECAB 317, 319 (2004).

⁸ Dr. Dryer refers to emergency room reports and other evidence not contained in the case record. The record contains brief notes from Dr. Chowdhury, but these notes do not provide a history of injury.

provide an opinion supporting an injury causally related to an October 9, 2007 incident. He noted an unclear medical history. Dr. Dryer did not address whether appellant's degenerative disc disease, arthritis or other diagnosed condition was causally related to an October 9, 2007 incident.

It is appellant's burden of proof to submit rationalized medical opinion evidence on the issue of causal relationship between a diagnosed condition and the October 9, 2007 employment incident. The Board finds that she did not meet her burden of proof in this case.

CONCLUSION

The Board finds appellant did not establish an injury in the performance of duty on October 9, 2007.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 18, 2008 is affirmed.

Issued: September 22, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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