

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

T.R., Appellant)

and)

DEPARTMENT OF THE TREASURY,)
INTERNAL REVENUE SERVICE,)
Jacksonville, FL, Employer)

**Docket No. 09-1579
Issued: April 1, 2010**

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 June 3, 2009 appellant filed a timely appeal from Office of Workers' Compensation Programs' April 27, 2009 merit decision. Under 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 sustained injuries to her face, mouth and right ear in the performance of duty on February 4, 2009.

FACTUAL HISTORY

On February 6, 2009 appellant, a 37-year-old contract representative, filed a claim for benefits alleging she received an electric shock from her telephone headset on February 4, 2009, injuring the right side of her face, mouth and right ear.

In a February 5, 2009 treatment note, Dr. Miguel Rosada, a Board-certified family practitioner, treated appellant for a neurological consultation. In reports dated February 5 to 17, 2009, he related appellant's history of injury and noted that she had experienced numbness and a burning sensation in the right side of her face. Dr. Rosada did not provide any diagnoses of a medical condition causally related to the February 4, 2009 work incident.

On February 17, 2009 the Office advised appellant that it required additional factual and medical evidence. It requested that she submit a medical report from her treating physician describing her symptoms and the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit any evidence within 30 days.

In a February 6, 2009 report, Dr. Fara M. Nadal, Board-certified in family practice, noted that he examined appellant on that day. He advised appellant to call her workers' compensation office because he believed that her problem was work related.

In a February 13, 2009 Form CA-17 duty status report, Dr. Rosada stated that appellant had a normal neurological examination. He checked a box indicating that appellant had a diagnosis of neuropathy due to a February 4, 2009 incident. Dr. Rosada released her to return to work without restrictions on February 13, 2009.

In a March 2, 2009 report, Dr. Nader Antonios, Board-certified in neurological surgery, reviewed the history that appellant experienced an electric shock on February 4, 2009 which affected the right side of her face and ear. Immediately after the shock, she felt burning and numbness involving the right ear, right side of her face and right lip. Dr. Antonios stated that the burning sensation had gradually and slowly improved; however, it had not completely resolved. On examination appellant had sensory loss involving the right side of her face right arm and the right upper trunk and abdomen. Dr. Antonios noted that appellant had an otherwise normal sensory examination. He advised that she had normal muscle strength in her arms and legs, normal muscle tone and normal gait and stance.

Dr. Antonios stated that appellant had a sensory impairment involving the right side of her face as well as the right side of her neck, arm and thorax/trunk down to the level of the umbilicus. He recommended that she undergo a magnetic resonance imaging (MRI) scan of the brain and cervical spine, in addition to blood urea nitrogen (BUN) test to determine creatinine clearance and whether she had a kidney problem. Dr. Antonios referred her to an ear, nose and throat specialist to evaluate her complaints of right ear pain. The results of the March 3, 2009 BUN were reported as normal.

In a March 12, 2009 note, Dr. Nadal stated that appellant had not previously received any neurological treatment except for migraine headaches.

By decision dated April 27, 2009, the Office denied appellant's claim. It found that she failed to submit sufficient medical evidence to establish that she sustained injury to the right side of her face, mouth or right ear on February 4, 2009.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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 within the applicable time limitation period 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.² 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.³

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.⁴ 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.⁵ 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 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.⁶

The Board has held that 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.⁷

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 relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁶ *Id.*

⁷ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁸ *Id.*

ANALYSIS

The Office accepted that appellant experienced an electric shock sensation on February 4, 2009 while wearing a headset. The question is whether the employment incident caused a personal injury. This can only be established by probative medical evidence.⁹ Appellant has not submitted sufficient medical evidence to establish that the February 4, 2009 employment incident caused the claimed injury.

Dr. Rosada reviewed appellant's history of the employment incident, noted findings on examination and indicated that she had numbness and a burning sensation in the right side of her face. However, he did not provide a firm medical diagnosis of a condition causally related to the February 4, 2009 work incident. The February 13, 2009 CA-17 form report from Dr. Rosada supported causal relationship with a checkmark on the form. The Board has held that, without further explanation or rationale, a checked box is not sufficient to establish causation.¹⁰ Dr. Antonios related that appellant experienced an electric shock from a telephone headset on February 4, 2009 which resulted in burning and numbness involving the right ear, right side of her face and right lip. He failed to provide a firm medical diagnosis of a condition causally related to the February 4, 2009 work incident. Dr. Antonios indicated that appellant experienced sensory loss involving the right side of her face, right arm and right upper trunk and abdomen. He did not address how any neurological symptoms were due to the accepted incident or why they extended into the upper right trunk or abdomen. He recommended diagnostic testing the results of which were normal.¹¹ Dr. Nadal's treatment notes merely indicated that appellant believed she sustained a work-related injury and that she had not been treated previously for neurological conditions other than migraine headaches. He did not explain whether appellant sustained injury to the right side of her face, mouth and right ear due to an electric shock from her telephone headset. There is insufficient rationalized evidence in the record that these injuries were work related. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹² Appellant failed to provide a medical report from a physician that provides a firm diagnosis or explanation as to the work incident of February 4, 2009 caused or contributed to the claimed injury.

The Office advised appellant of the evidence required to establish her claim; however, appellant failed to submit probative medical evidence. The reports of record do not explain the medical process through which the February 4, 2009 incident caused the claimed injuries. The Office properly denied appellant's claim for compensation.

⁹ *Carlone, supra* note 5.

¹⁰ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

¹¹ There is no indication in the record as to whether appellant underwent the MRI scan testing recommended by Dr. Antonios.

¹² *See Anna C. Leanza*, 48 ECAB 115 (1996).

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury on February 4, 2009.

ORDER

IT IS HEREBY ORDERED THAT the April 27, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 1, 2010
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