United States Department of Labor
Employees' Compensation Appeals Board

M.R., Appellant	)	
and	)	**Docket No. 09-1867**
	)	**Issued: April 13, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Calumet City, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 14, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated June 29, 2009, which denied her claim. 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 February 6, 2009.

FACTUAL HISTORY

On February 17, 2009 appellant, then a 59-year-old maintenance worker, filed a traumatic injury claim alleging that on February 6, 2009 she was pulling equipment in the performance of duty and sprained a muscle. She stopped work on February 7, 2009. The employing establishment controverted the claim.

In a February 17, 2009 statement, appellant noted that she moved an all-purpose container (APC) out on a dock. Later that day, she felt a muscle strain in her left shoulder. The

pain worsened and appellant went to see her physician, who advised her that she had sprained a muscle in her left shoulder.

Appellant submitted a February 10, 2009 disability certificate from Dr. Ana Solis, Board-certified in internal medicine, who placed appellant off work from February 10 to 13, 2009. In a March 3, 2009 report, Dr. Solis noted that appellant received treatment on that date and could resume work on March 23, 2009. In an April 7, 2009 certification of health provider form, she advised that appellant was pulling equipment at work when she experienced left shoulder pain. Dr. Solis stated that appellant was incapacitated from February 9 through April 10, 2009.

The Office also received a copy of appellant's modified offer of duty, which she accepted on February 17, 2009.

By letter dated May 28, 2009, the Office advised appellant that additional factual and medical evidence was needed. It explained that the physician's opinion on causal relation was crucial to her claim and provided appellant 30 days to submit the requested information.

The Office received a February 10, 2009 treatment note from Dr. Solis, who indicated appellant was seen for shoulder pain. A February 11, 2009 x-ray of the left shoulder read by Dr. Petre Wecsler, a Board-certified diagnostic radiologist, revealed no fracture and a mild irregularity at the greater tuberosity, which could be due to degenerative joint disease or peritendinitis. The Office also received a physical therapy report.

In a June 29, 2009 decision, the Office denied appellant's claim on the grounds that she did not establish an injury as alleged. It found that the evidence was sufficient to establish that the claimed incident occurred as alleged, that she took an APC out on the dock and felt pain in her left shoulder. The Office also found that the medical evidence failed to provide a diagnosis, which could be connected to the work-related events.

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 within 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]

[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).

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] 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.[6]

ANALYSIS

Appellant alleged that she sustained a shoulder condition on February 6, 2009. The Office accepted that appellant took an APC out on the dock and felt pain in her left shoulder. The Board finds that the claimed incident -- that she took an APC out on the dock and felt pain in her left shoulder, occurred as alleged.

The medical evidence is insufficient to establish that this incident caused an injury. The medical reports of record do not establish that taking an APC out on the dock caused a personal injury on February 6, 2009. The medical evidence contains no reasoned explanation of how moving an APC on February 6, 2009 caused or aggravated an injury.[7]

Dr. Solis found that appellant was totally disabled and placed her off work commencing February 9, 2009. The Board notes that her February 10, 2009 treatment note indicates that appellant was seen for shoulder pain. However, Dr. Solis did not address the cause of appellant's shoulder. Moreover, she did not provide a firm medical diagnosis. Thereafter, Dr. Solis' reports are of diminished little probative value. The Board has held that a diagnosis of pain does not constitute a basis of payment for compensation, as pain is considered to be a symptom rather than a specific diagnosis.[8] While Dr. Solis' April 7, 2009 report stated that appellant related that she was pulling some equipment and experienced pain in her left shoulder. She merely reiterated the history provided by appellant. Dr. Solis did not provide her own opinion as to whether particular employment activities on February 6, 2009 caused a diagnosed medical condition.

The Office also received a diagnostic report dated February 11, 2009, but does not provide any opinion regarding the cause of the reported condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9]

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

[6] *Id*.

[7] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[8] *Robert Broom*, 55 ECAB 339 (2004).

[9] *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009).

The Office also received a physical therapy report. However, health care providers such as physical therapists are not physicians as defined under the Act. Their opinions on causal relationship do not constitute rationalized medical opinions and have no probative value.[10]

The medical evidence submitted by appellant does not address how the February 6, 2009 pulling incident caused or aggravated a diagnosed medical condition. The medical evidence of record is of limited probative value and insufficient to establish that the February 6, 2009 employment incident caused or aggravated the claimed injury.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.[11]

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 13, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

[10] *See Jane A. White*, 34 ECAB 515, 518 (1983).

[11] Following issuance of the June 29, 2009 decision, appellant submitted additional evidence to the Office. The Board may not consider such evidence for the first time on appeal as its review of the case is limited to the evidence that was before the Office at the time of its decision. *See* 20 C.F.R. § 501.2(c).