

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

O.W., Appellant)	
)	
and)	Docket No. 09-2110
)	Issued: April 22, 2010
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
Chamblee, GA, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 24, 2009 appellant filed a timely appeal from a May 27, 2009 merit decision of the Office of Workers' Compensation Programs denying her occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On March 13, 2009 appellant, then a 52-year-old tax technician, filed an occupational disease claim alleging that she developed pain, numbness and tingling in her right hand, upper arm and shoulder (carpal tunnel) causally related to her federal employment. She did not provide a description of her work duties.

On March 30, 2009 the Office requested additional evidence, including a detailed description of the employment activities which contributed to appellant's alleged upper extremity condition. It also requested a comprehensive medical report containing a diagnosis, description of her symptoms, the results of examinations and tests and medical rationale explaining how her diagnosed condition was causally related to specific factors of her employment. There was no response from appellant.

By decision dated May 27, 2009, the Office denied appellant's claim on the grounds that the factual and medical evidence was insufficient to establish that her carpal tunnel syndrome was causally related to factors of her employment.¹

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.² Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence.³

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

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁵

¹ Subsequent to the May 27, 2009 Office decision, additional documents were associated with the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

² *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

³ *M.D.*, 59 ECAB ____ (Docket No. 07-908, issued November 17, 2007).

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

⁵ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury in the performance of duty.

The Office advised appellant to submit a detailed description of the employment activities believed to have caused or contributed to her alleged upper extremity condition, as well as a comprehensive medical report containing a diagnosis and an explanation as to how her diagnosed condition was caused by the identified employment activities. Appellant failed to submit a description of her employment activities or any medical evidence pertaining to her alleged condition. Although the Office informed her of the deficiencies in the evidence, she did not submit the factual and medical evidence necessary to establish a *prima facie* claim for compensation.⁶

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury in the performance of duty.

ORDER

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

Issued: April 22, 2010
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

⁶ See *Donald W. Wenzel*, 56 ECAB 390 (2005).