United States Department of Labor
Employees' Compensation Appeals Board

E.J., Appellant	)	
	)	**Docket No. 09-1481**
and	)	**Issued: February 19, 2010**
DEPARTMENT OF AGRICULTURE, FOOD SAFETY INSPECTION SERVICE, Denison, IA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 26, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 10, 2008 merit decision 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 this case.

ISSUE

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

FACTUAL HISTORY

On January 22, 2008 appellant, then a 52-year-old food inspector, filed an occupational disease claim alleging that she sustained an intrarticular fracture of the digital radius in the left wrist as a result of pulling beef and turning carcasses. She stated that she had increased pain after performing this task.

Appellant submitted a report dated January 21, 2008 from Dr. Todd A. Woollen, a Board-certified family practitioner, who stated that appellant had been experiencing left forearm and wrist pain for two weeks. Although appellant recalled no specific injury, she had been performing repetitive activities at work. Her medical history included bilateral carpal tunnel release surgery. X-rays revealed the appearance of a subtle defect in the distal radius. Dr. Woollen prescribed a wrist splint for a left wrist fracture of the distal radius.

By letter dated February 22, 2008, the Office informed appellant that the information submitted was insufficient to establish her claim, noting that there was no medical evidence, establishing that her diagnosed wrist condition was causally related to factors of her federal employment. It informed appellant that she had 30 days to submit additional evidence to support her claim, including a description of employment activities alleged to have caused her condition and a report explaining how her employment activities caused the diagnosed physician's condition.

The record contains a February 20, 2008 note from Dr. Daniel Larose, a Board-certified orthopedic surgeon, indicating that appellant was "six weeks post-fracture of the left wrist" and was doing well. Dr. Larose also provided a work excuse reflecting that appellant was unable to work until February 24, 2008.

In a letter dated March 11, 2008, Dr. Timothy E. Grady, an employing establishment veterinarian, reported that appellant had complained to him on January 10, 2008 of discomfort she was experiencing while "turning beef' at the final carcass inspection station. He stated that her left arm was visibly "puffy" relative to the opposite arm, from about the distal one third of the forearm, across the wrist to include the hand, and that he had advised her to seek medical treatment. Dr. Grady stated that repetitive motion activity was a major part of inspection tasks by Food Safety Inspection Service on-line inspectors, who spent approximately two hours per day at each station. Repetitive activities at head inspection involved incising the muscles of mastication and lymph nodes and palpating the tongue, at the rate of 76 per hour. The viscera table involved inspection of the liver, heart and lungs, at the rate of 152 per hour. The final rail inspection involved rotating the half carcasses of beef, each weighing approximately 400 pounds, to observe for contamination and/or pathology. This process required pushing and pulling to achieve observation of each surface and was performed at the rate of approximately 608 per hour.

In a January 22, 2008 report, Dr. Woollen diagnosed an intra-articular distal radius fracture, with minimal displacement confirmed by x-ray. He placed appellant in a short arm cast.

Appellant submitted a February 5, 2008 report from Dr. Roy Abraham, an orthopedist, who stated that appellant had sustained a nondisplaced crack of the left wrist on January 10, 2008. Noting that x-rays revealed good positioning of the fracture, he replaced

appellant's cast with a splint. The record contains x-rays of the left wrist dated January 21, February 5 and 20, 2008.

In an undated response to the Office's February 22, 2008 development letter, appellant stated that she injured her left wrist on January 10, 2008 while she was railing out carcasses. When she was turning a carcass with a hook, it "turned back on [her] causing [her] wrist to twist and pull." Appellant indicated that since her carpal tunnel release surgery, which occurred in 1998, she had experienced no pain in her left wrist until January 10, 2008.

By decision dated April 25, 2008, the Office denied appellant's claim, finding that the claimed events had occurred, but that the medical evidence of record failed to demonstrate that the claimed medical condition was causally related to the established work-related events.

On May 5, 2008 appellant requested reconsideration of the Office's April 25, 2008 decision. She submitted copies of documents previously received and considered by the Office, including a report and a prescription from Dr. Woollen, both dated February 5, 2008, and a February 5, 2008 x-ray report.

By decision dated December 10, 2008, the Office denied modification of its previous decision, finding that the medical evidence of record failed to establish a causal relationship between appellant's diagnosed wrist condition and established work-related events. On appeal, appellant contended that she was not given adequate assistance in presenting her claim, and that her physicians should have submitted the necessary documentation.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[4]

When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," consisting of two components which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[5]

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion 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]

An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[7]

It is improper to deny a case on the basis that the claimant submitted an incorrect form, such as a notice of traumatic injury[8] rather than a notice of occupational disease, as such a submission is a technical error. The claims examiner must obtain the appropriate notice of injury or disease if it does not already appear in file.[9]

ANALYSIS

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

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[4] *Id.*

[5] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

[6] *Id*.

[7] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[8] The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[9] Federal FECA Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.4(b) (January 2003).

An employee who claims benefits under the Act has the burden of establishing the essential elements of his or her claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.[10] However, it is well established that proceedings under the Act are not compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[11]

The Office accepted that appellant was engaged in repetitive employment activities as a food inspector, and that she twisted and pulled her left wrist on January 10, 2003 while turning a carcass with a hook. It denied her claim, however, on the grounds that the evidence failed to establish a causal relationship between those activities and her diagnosed wrist fracture. The Board finds that the medical evidence of record supports a causal relationship between appellant's work activities and her wrist condition.

Dr. Abraham stated that appellant sustained a nondisplaced crack of the left wrist on January 10, 2008. Noting that x-rays revealed good positioning of the fracture, he replaced appellant's cast with a splint. Dr. Abraham's report provides a definitive diagnosis and is factually consistent with Dr. Grady's March 11, 2008 letter, which detailed appellant's complaints that she injured her left wrist on January 10, 2008 while "turning beef" at the final carcass inspection station and with Dr. Larose's February 20, 2008 report reflecting that appellant was "six weeks post-fracture of the left wrist."

On January 21, 2008 Dr. Woollen stated that appellant had been experiencing left forearm and wrist pain for two weeks, noting that she had been performing repetitive activities at work. He prescribed a wrist splint for a left wrist fracture of the distal radius. On January 22, 2008 Dr. Woollen diagnosed an intra-articular distal radius fracture, with minimal displacement and placed appellant in a short arm cast. Although his reports do not explain how appellant's work activities caused her diagnosed condition, they strongly suggest and support a relationship between her work activities and the left wrist fracture. The reports are also consistent with the factual histories provided by Dr. Grady and Dr. Larose.

The Board notes that, while none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that she sustained an employment-related wrist condition and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between appellant's wrist condition and the identified

[10] *See Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); *see also Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

[11] *Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard, supra* note 9; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.[12]

The Board also notes that, although appellant filed a claim for an occupational disease, she has provided evidence supporting that she sustained a traumatic injury on January 10, 2008. As noted, the filing of a claim on the incorrect form is not cause for denial of the claim.

On remand the Office should submit a statement of accepted facts to appellant's treating physician, or to a second opinion examiner, in order to obtain a rationalized opinion as to whether her current condition is causally related to factors of her employment, either directly or through aggravation, precipitation or acceleration.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2008 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further development consistent with this decision.

Issued: February 19, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[12] *See Virginia Richard*, *supra* note 10; *see also Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).