

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

C.R., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, West Palm Beach, FL, Employer)

**Docket No. 09-1380
Issued: January 6, 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 May 5, 2009 appellant filed a timely appeal of the November 13, 2008 and January 8, 2009 decisions of the Office of Workers' Compensation Programs denying her claim for injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant sustained an injury on September 25, 2008, as alleged.

On appeal, appellant contends that she sustained an injury when she was exposed to the herpes zoster vaccine and that her reaction was rare but possible.

FACTUAL HISTORY

On September 25, 2008 appellant, then a 48-year-old licensed practical nurse, filed a claim alleging that on that date she was covering an injection clinic and was exposed to the varicella zoster vaccine when she was "drawing it up" on a patient. She alleged that, as a result

of this incident, she developed shingles. By letter dated October 6, 2008, the Office requested that appellant submit further medical evidence in support of her claim, within 30 days. Appellant did not respond.

In a November 13, 2008 decision, the Office denied appellant's claim. It found that the incident of September 25, 2008 occurred, as alleged. However, the Office found that no medical evidence was submitted to support an injury.

On November 20, 2008 appellant requested reconsideration. She submitted an outpatient note indicating that she was seen on September 25, 2008 by Jose de la Llana of the employing establishment's occupational health office, who noted that appellant had a herpes zoster. Mr. de la Llana also submitted a note indicating that appellant was off for the duration of her treatment, or about seven days. He next saw appellant on October 3, 2008 and he released her from care. In a September 26, 2008 note, Dr. Jane Lamp, a Board-certified family practitioner, noted that appellant had experienced itching and shingles. She stated, "Shingles is activation of a virus in the dorsal root ganglion from unknown causes. It is unknown at this time if the work environment caused activation of the virus to lead to shingles."

On November 25, 2008 the Office received appellant's responses to its questions. Appellant noted that, while drawing varicella zoster vaccine, some squirted onto her hand and she washed it immediately. She sought treatment for shingles and was told to stay home for the duration of the treatment. Appellant advised that she never had a prior case of shingles. She noted that she had surgery to remove her gallbladder on July 31, 2008, and stated that this may have reduced her immune response.

In a January 8, 2009 decision, the Office denied appellant's claim as a the medical evidence was insufficient to establish a causal relationship between her condition and her employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that an 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. 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.²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must

¹ 5 U.S.C. § 8122(a).

² *Id.*

submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.³ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁴

Causal relationship is a medical issue⁵ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁶ must be one of reasonable medical certainty⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁸

ANALYSIS

The Office found that appellant experienced the alleged work incident, an exposure to the varicella zoster virus while drawing up the vaccine. She subsequently experienced an episode of shingles. The Office denied appellant's claim finding that the medical evidence did not establish causal relation between the shingles and the September 25, 2008 incident.⁹

The Board finds that appellant has not established a causal relationship between her shingles condition and the accepted work incident. She has not provided rationalized medical evidence in support of her claim. There is no evidence that Mr. de la Llana is a physician as defined under the Act.¹⁰ Therefore, his reports are not probative and are not sufficient to establish her claim. Dr. Lamp did not address whether appellant's shingles were caused by her

³ *John J. Carlone*, 41 ECAB 345 (1989).

⁴ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ Appellant filed his claim as an occupational disease claim. However, this claim is actually a traumatic injury claim. A traumatic injury means a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift. An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q), (ee); *Andy J. Paloukos*, 54 ECAB 712 (2003). As the incident, *i.e.*, exposure to the herpes zoster virus while administering a vaccine, occurred on a specific day, this is a claim for a traumatic injury

¹⁰ Section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by applicable state law. Only medical evidence from a physician as defined by the Act will be accorded probative value. Health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value. *Jan A. White*, 34 ECAB 515, 518 (1983).

employment. She stated that it was unknown whether appellant's work environment caused activation of the virus that lead to shingles. This evidence does not support appellant's claim.

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 the condition was caused by her employment is sufficient to establish causal relationship.¹¹ The Board has held that the fact that a condition manifests itself or worsens during a period of employment¹² or that the work activities produce symptoms revelatory of an underlying condition¹³ does not raise an inference of causal relationship between the two. Appellant failed to provide medical evidence establishing a causal relationship between her shingles and the September 25, 2008 incident. She has not met her burden of proof.¹⁴

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty on September 25, 2008.

¹¹ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹² *E.A.*, 58 ECAB ____ (Docket No. 07-1145, issued September 7, 2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

¹³ *D.E.*, 58 ECAB ____ (Docket No. 07-27, issued April 6, 2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

¹⁴ Appellant also submitted some information from Merck with regard to live zoster vaccine. The Board has held that newspaper clippings, internet articles, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment. Such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee. See *Joe T. Williams*, 44 ECAB 518, 521

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 8, 2009 and November 13, 2008 are affirmed.

Issued: January 6, 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