

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

M.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fort Worth, TX, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-82
Issued: July 14, 2010**

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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 13, 2009 appellant filed a timely appeal from the October 1, 2009 merit decision of the Office of Workers' Compensation Programs denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of appellant's case.

ISSUE

The issue is whether appellant established that factors of her federal employment caused or aggravated her diagnosed conditions.

FACTUAL HISTORY

On June 16, 2009 appellant, a 59-year-old distribution clerk, filed an occupational disease claim (Form CA-2) in which she alleges sustaining a partially torn bicep tendon that she attributes to employment duties such as casing mail. She first became aware of her condition on December 30, 2008. Appellant realized her condition was caused by her employment on

May 21, 2009. She alleges that, after returning to limited-duty work,¹ her employment duties aggravated her condition.

Appellant submitted reports bearing an illegible signature and notes signed by an occupational physical therapist.

In a January 1, 2009 report, Dr. James Purpura, Board-certified in family medicine, diagnosed “severe [forearm] muscle sprain/strain.”

Appellant submitted a January 1, 2009 statement describing an “off-the-job” right arm injury, her history of injury, and requests to return to work under the restrictions prescribed by her physician.

On March 11, 2009 Dr. Purpura reported that a magnetic resonance imaging (MRI) scan of appellant’s right elbow revealed a partial tear of the bicep tendon. In a subsequent report dated March 26, 2009, he again diagnosed a partial right bicep tendon tear. Dr. Purpura took appellant off work for “four weeks.”

Appellant submitted a March 26, 2009 report in which Dr. Clifford De Prang, a Board-certified orthopedic surgeon, presented findings on examination and diagnosed a right partial tear of the distal bicep tendon. Also submitted were a series of unsigned reports, dated April 23, May 23 and June 3, 2009.

In a subsequent report dated April 24, 2009, Dr. De Prang diagnosed a “muscle tear,” excused appellant from work for one day and provided work restrictions.

In notes dated June 13 and 28, 2009, appellant described her history of injury, expounded upon her course of treatment and described her condition.

By decision dated October 1, 2009, the Office denied the claim because appellant failed to demonstrate that her condition was caused or aggravated by the established employment factors.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of proof to establish the essential elements of his claim by the weight of the evidence,³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment

¹ Appellant has an accepted claim, file number xxxxxx815, under which, after receiving medical treatment, she returned to work.

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

injury.⁴ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁵ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.⁸

ANALYSIS

The Office accepted the employment factors appellant deemed responsible for her condition. Appellant's burden is to demonstrate the established employment factors caused or aggravated the diagnosed condition. This is a medical issue that can only be proven by probative medical opinion evidence. The medical opinion evidence of record lacks the requisite reasoning to establish the causal relationship between appellant's condition and the established employment factors.

The Board notes that appellant submitted reports from a physical therapist and reports bearing an illegible signature. Because healthcare providers such as nurses, acupuncturists, physician assistants and physical therapists are not considered "physicians" under the Act, their reports and opinions do not constitute competent medical evidence,⁹ and accordingly, these

⁴ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Id.*; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁶ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁷ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁸ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983)

reports do not establish that the established employment factors caused appellant's condition. Furthermore, the reports bearing illegible signatures are not considered probative medical evidence because they lack proper identification as to whether they were prepared by physicians.¹⁰

The reports and notes from Drs. De Prang and Purpura have diminished probative value on the issue of causal relationship because they lack any opinion explaining how the established employment factors caused or aggravated the conditions they diagnosed.¹¹ These reports offer no medical opinion explaining the cause of the diagnosed conditions and to not establish a causal relationship between the identified employment factors and appellant's condition.

An award of compensation may not be based on surmise, conjecture or speculation.¹² 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.¹³ The fact that a condition manifests itself or worsens during a period of employment¹⁴ or that work activities produce symptoms revelatory of an underlying condition¹⁵ does not raise an inference of causal relationship between a claimed condition and employment factors.

Because the medical evidence contains no reasoned discussion of causal relationship, the Board finds that appellant has not established the essential element of causal relationship.

CONCLUSION

The Board finds that appellant has not established that her diagnosed conditions were caused or aggravated by her federal employment.

¹⁰ See *R.M.*, 59 ECAB ___ (Docket No. 08-734, issued September 5, 2008); *Richard Williams*, 55 ECAB 343 (2004).

¹¹ See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

¹² *Edgar G. Maiscott*, 4 ECAB 558 (1952) (holding appellant's subjective symptoms and self-serving declarations do not, in the opinion of the Board, constitute evidence of a sufficiently substantial nature)

¹³ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

¹⁴ *E.A.*, 58 ECAB 677 (2007); *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

¹⁵ *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

ORDER

IT IS HEREBY ORDERED THAT the October 1, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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