



Appellant submitted an August 6, 2007 disability slip, received by the Office on August 15, 2007, from Dr. Leo Parnes, an osteopath, who stated that she had been disabled since July 31, 2007 due to left shoulder bursitis and CTS. Dr. Parnes advised that she was scheduled to return to work on August 13, 2007.

By letter dated August 20, 2007, the Office advised appellant that she needed to submit additional factual and medical evidence in support of her claim. It stated that she had 30 days to submit the requested information.

In an August 28, 2007 form report, Dr. Parnes stated that on July 25, 2007 appellant was pulling a heavy post cart from the elevator to the mail sorter when she experienced pain and numbness in the left hand, with tingling and numbness in the fingers of the left hand. He also indicated that she had pain radiating up the left hand into the left wrist, left forearm and left shoulder, in addition to severe pain in the left shoulder with limited abduction of the left arm at the shoulder. Dr. Parnes opined that appellant was totally disabled.

In an August 15, 2007 letter from appellant's supervisor, Harvey Outlaw, received by the Office on August 28, 2007, the employing establishment contraverted the claim. Mr. Outlaw stated that, on August 13, 2007, appellant had just returned from being absent from work since July 25, 2007.<sup>1</sup> He stated that when she initially reported the alleged accident on August 13, 2007, she stated that she had told him and supervisor, Marcella Robinson, about the injury on the day it happened but alleged that they both failed to complete the proper paperwork. Mr. Outlaw stated, however, that when appellant was questioned on August 15, 2007 by supervisor Susan Curate, appellant acknowledged that she had told Mr. Robinson and Mr. Outlaw only that she was not feeling well and that her arm hurt. Mr. Outlaw asserted that she admitted to Ms. Curate and Mr. Outlaw that she did not tell either supervisor that she had hurt herself while performing her work duties.

Mr. Outlaw stated that at no time during the course of the 18 calendar days appellant was away from work did she give notice to any of her supervisors that she had sustained a work-related injury and was absent due to this injury. He noted that she made seven telephone calls to the worksite during her absence to report that she was not coming in to work; however, she never mentioned during any of these calls that her absence was caused by the alleged accident. Mr. Outlaw also stated that appellant did not seek medical attention until 13 days after the alleged injury occurred. He asserted that the illnesses diagnosed on appellant's medical report are not those typically caused by a single incident.

In a Form CA-16 report dated September 10, 2007, Dr. Parnes indicated that appellant sustained an injury to her left hand, left wrist, left arm and left shoulder on July 25, 2007 while pushing a heavy cart. He stated that she had left shoulder bursitis; left CTS; left shoulder spasm and pain; left arm and wrist spasm and pain; numbness in fingers of the left hand; left wrist sprain; left shoulder sprain; and an unspecified injury to the left wrist and left hand. On the form, Dr Parnes responded yes to the question of whether the condition found was caused or aggravated by the employment activities.

---

<sup>1</sup> Mr. Outlaw stated that appellant was on scheduled leave on July 26, 2007.

In a Form CA-17 report dated August 20, 2007, received by the Office on September 10, 2007, Dr. Parnes advised that appellant sustained injuries to her left hand, left wrist, left arm and left shoulder on July 25, 2007 while pushing a heavy cart. He indicated, however, that the history of injury she provided was not consistent with the injuries she sustained. Appellant noted left shoulder bursitis; left CTS; left shoulder spasm and pain; left arm and wrist spasm and pain; numbness in fingers of the left hand; left wrist sprain; left shoulder sprain; and an unspecified injury to the left wrist and left hand. On the form, Dr. Parnes responded yes to the question of whether the condition found was caused or aggravated by the employment activities.

In an August 24, 2007 disability slip, received by the Office on September 20, 2007, Dr. Parnes reiterated his previously stated diagnoses and indicated that appellant's date of injury was July 25, 2007. He also stated that she had been disabled since July 26, 2007. Dr. Parnes advised that appellant would be totally disabled for an indefinite period of time.

By decision dated September 25, 2007, the Office denied appellant's claim, finding that she failed to establish fact of injury. It stated that she failed to submit a clear statement regarding the basis of her claim; it, therefore, found that the factual basis of her claim was unclear and insufficient to establish that the incident occurred on the date, at the time and in the manner she alleged. The Office further found that the medical evidence appellant submitted lacked sufficient medical rationale to establish that the claimed diagnoses were sustained in connection with the reported incident.

On October 20, 2007 appellant requested a review of the written record.

In a report dated August 20, 2007, received by the Office on November 1, 2007, Dr. Parnes stated that appellant sustained an injury by pulling a heavy mail cart from the elevator to the flat sorter. Dr. Parnes indicated that as a result of this injury she developed pain in the left hand, left wrist, left arm and left shoulder with numbness in the fingers of the left hand. He noted on examination that appellant sustained traumatic contusion and sprain of the left shoulder and left wrist, which caused pain along the left arm and limited movement of the left arm at the shoulder, in addition to numbness in the fingers of the left hand and CTS. Dr. Parnes also noted left-sided neck pain.

Dr. Parnes also stated that appellant had sustained a traumatic contusion and sprain of the left shoulder with internal derangement and pain radiating up to the left side of the neck and down the left arm. He advised that she also had a traumatic contusion and sprain of the left wrist and left hand with edema and CTS.

In a September 11, 2007 report, received by the Office on November 30, 2007, Dr. Howard I. Baum, Board-certified in orthopedic surgery, related that appellant sustained an injury to his right arm while working as a mail handler on July 25, 2007 while pulling a heavy cart. Dr. Baum advised that she experienced tingling to the left upper extremity from her neck and pain with tingling and numbness into the left fingers.

In an October 24, 2007 statement, appellant reiterated that on July 25, 2007 she sustained a traumatic injury to her left arm and hand by pulling on a heavy mail cart.

By decision dated February 13, 2008, an Office hearing representative affirmed the September 25, 2007 Office decision.

On December 17, 2008 appellant requested reconsideration.

In a December 5, 2008 report, received by the Office on December 29, 2007, Dr. Parnes reiterated that appellant was injured on July 25, 2007 while pulling a heavy postal cart, injuring her neck, left shoulder and left wrist. He advised that this incident was so severe that appellant had been unable to return to work due to her severe pain since August 16, 2007. Dr. Parnes indicated that she experienced persistent spasms and pain in her neck, left shoulder and left wrist, with decreased range of motion at the cervical spine and multiple tender points as well as along the cervical spine. He stated that on examination appellant sustained a traumatic cervical derangement with sprain, strain and spasm with painful, spastic and significantly limited rotation of the cervical spine to the left at 60 degrees with pain radiating to the left side of the neck. Dr. Parnes related that she had painful, spastic and significantly limited rotation of the cervical spine to the right at 60 degrees with pain radiating to the right side of the neck. He noted that appellant was evaluated by a neurologist who had her undergo a magnetic resonance imaging scan; the results of this test revealed herniations and bulging discs at multiple cervical disc levels.

Dr. Parnes advised that examination of the left wrist revealed a sustained traumatic sprain and strain and limited range of motion. He noted that appellant still suffered from intense pain and stiffness of the left shoulder and left wrist. Dr. Parnes concluded that, as a result of her various injuries, she had been disabled from work since August 16, 2007. He opined that the injuries appellant sustained in the July 25, 2007 work incident resulted in a permanent, totally disabling condition, which prevented her from performing all of her usual daily activities and limited her functioning of the injured areas. Dr. Parnes noted that she had sustained severe ligamentous and discogenic injuries to the cervical spine, including bulging and herniated discs and a left rotator cuff tear, which had caused her to become incapacitated from performing any type of work, even sedentary work. He stated that appellant was unable to climb, pull, push, crouch, balance, crawl, bend, reach or lift; she was unable to walk, sit or stand for more than two hours in an eight-hour day and required frequent periods of rest where she had to lie down.

By decision dated March 30, 2009, the Office denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing that 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, 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.<sup>3</sup> These are the essential

---

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place and in the manner alleged or whether the alleged injury was in the performance of duty,<sup>7</sup> nor can the Office find fact of injury if the evidence fails to establish that the employee sustained an “injury” within the meaning of the Act. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee’s statements must be consistent with surrounding facts and circumstances and her subsequent course of action.<sup>8</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cause doubt on an employee’s statements in determining whether he or she has established his or her claim.<sup>9</sup>

### ANALYSIS

In the present case, the Office found that the record contained conflicting and inconsistent evidence regarding whether the claimed event occurred at the time, place and in the manner alleged. It noted that although appellant stated on her CA-1 form and in her October 24, 2007 statement that she injured herself while pulling a cart on July 25, 2007, she failed to provide a clear account of the manner in which the July 25, 2007 incident resulted in her claimed injury. The Office concluded that she did not establish that she sustained the injury in the performance of duty on July 25, 2007. The Board finds, however, that appellant presented sufficient evidence to establish that she injured her left hand, left wrist, left arm and left shoulder at the time, place and in the manner alleged.<sup>10</sup> The Board notes that appellant’s supervisor, Mr. Outlaw, did not consider her injury work related because she made no mention of any accident which allegedly occurred

---

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(e)(e).

<sup>7</sup> *Elaine Pendleton*, *supra* note 3.

<sup>8</sup> See *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

<sup>9</sup> See *Constance G. Patterson*, 41 ECAB 206 (1989).

<sup>10</sup> *Id.*

on July 25, 2007 until August 13, 2007, despite the fact that she called the employing establishment seven times while off work during that period. He asserted that appellant merely stated on July 25, 2007 that she was not feeling well and that her arm hurt; she did not indicate that this was work related or that her absence was due to a work-related incident. Mr. Outlaw also expressed skepticism regarding the work relatedness of appellant's left hand, wrist, arm and shoulder injuries because she did not seek medical attention until 13 days after the alleged injury occurred.

As stated above, however, the Board has held that an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>11</sup> Although no one witnessed the incident and Mr. Outlaw did not believe appellant's account of how the injury occurred, her statement that she experienced pain on July 25, 2007 while pulling a cart was not contradicted by any evidence in the record. In addition, appellant sought medical attention on August 6, 2007, less than two weeks after the date that she allegedly sustained injuries to her left wrist, hand, arm and shoulder causally related to her employment. Dr. Parnes initially indicated in his August 20, 2007 CA-17 form report that he did not believe that the conditions appellant had were caused by the type of accident she described. In several subsequent reports he submitted, however, dated August 20, 24 and 28, 2007 and December 5, 2008, Dr. Parnes stated unequivocally that appellant sustained these injuries on July 25, 2007 at the place and in the manner she described.<sup>12</sup>

The Board finds that the totality of this evidence, which includes appellant's August 15, 2007 statement and a report indicating that she was examined and treated for left shoulder and wrist conditions on August 6, 2007, approximately two weeks after she allegedly experienced significant pain in her left hand, wrist, arm and shoulder, is sufficient to establish that she sustained the alleged employment incident in the performance of duty on July 25, 2007. The Office controverted the claim and contended that she did not experience the incident as alleged on the date in question. However, the record contains no contemporaneous factual evidence indicating that the claimed July 25, 2007 work incident did not occur as alleged.<sup>13</sup> Under the circumstances of this case, therefore, the Board finds that appellant's allegations have not been refuted by sufficiently strong or persuasive evidence. The Board finds that the evidence of record is sufficient to establish that the incident involving her left hand, wrist, arm and shoulder on July 25, 2007 occurred at the time, place and in the manner alleged.

The Board finds, however, that appellant failed to submit rationalized medical opinion evidence to sufficiently describe or explain the medical process by which the claimed July 25, 2007 work incident would have been competent to cause the claimed injuries. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>14</sup>

---

<sup>11</sup> *Constance G. Patterson*, *supra* note 9; *Thelma S. Buffington*, 34 ECAB 104 (1982).

<sup>12</sup> The Board notes that Dr. Baum presented the same history of injury in his September 11, 2007 report.

<sup>13</sup> *See Thelma Rogers*, 42 ECAB 866 (1991).

<sup>14</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>15</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

Dr. Parnes noted in several reports from August and September 2007 that appellant had been experiencing pain and numbness in the left hand; tingling and numbness in the fingers of the left hand; pain radiating up the left hand into the left wrist, left forearm and left shoulder; and severe pain in the left shoulder with limited abduction of the left arm at the shoulder. He stated that she had left shoulder bursitis; left CTS; left shoulder spasm and pain; left arm and wrist spasm and pain; numbness in fingers of the left hand; left wrist sprain; left shoulder sprain; and an unspecified injury to the left wrist and left hand. Dr. Parnes opined that appellant was totally disabled during this period due to these injuries. These reports, however, are not probative with regard to causal relationship because they do not contain rationalized medical opinion evidence.<sup>16</sup> In addition, Dr. Parnes failed to present a diagnosis of appellant's condition causally related to the July 25, 2007 employment injury. Dr. Baum stated the history of injury, stated findings on examination noted that she experienced tingling to the left upper extremity from her neck and pain with tingling and numbness into the left fingers. However, he did not provide an opinion regarding the work relatedness of appellant's alleged conditions. There is no indication in the record, therefore, that her claimed left hand, wrist, arm and shoulder conditions were work related.

In his December 5, 2008 report, Dr. Parnes stated that appellant experienced persistent spasms and pain in her neck, left shoulder and left wrist, with decreased range of motion and pain in the cervical spine. He diagnosed traumatic sprain and strain of the left wrist and traumatic cervical derangement with sprain, strain and spasm. Dr. Parnes opined that the injuries appellant sustained in the July 25, 2007 work incident resulted in a permanent, totally disabling condition which prohibited her from performing her daily activities and limited her functioning of the injured areas. He prescribed restrictions on climbing, walking, sitting and standing, in addition to prohibiting pulling, pushing, crouching, balancing, crawling, bending, reaching and lifting. This report, however, is of limited probative value in that Dr. Parnes did not provide adequate medical rationale in support of his conclusions.<sup>17</sup> He did not describe appellant's accident in any detail or how the accident would have been competent to cause the claimed hand, wrist, arm and shoulder conditions. Moreover, Dr. Parnes' opinion is of limited probative value for the further reason that it is generalized in nature and equivocal in that he only noted summarily that appellant's conditions were causally related to the July 25, 2007 incident in

---

<sup>15</sup> *Id.*

<sup>16</sup> Furthermore, the September 20, 2007 CA-16 form report from Dr. Parnes which supports causal relationship with a checkmark is insufficient to establish the claim, as the Board has held that without further explanation or rationale, a checked box is not sufficient to establish causation. *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

<sup>17</sup> *William C. Thomas*, 45 ECAB 591 (1994).

which she was pulling a heavy mail cart.<sup>18</sup> The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>19</sup> Appellant failed to provide a rationalized, probative medical opinion relating her current condition to any factors of her employment. Therefore, she failed to provide a medical report from a physician that the work incident of July 25, 2007 caused or contributed to the claimed left hand, wrist, arm and shoulder injuries.

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Appellant, therefore, did not provide a medical opinion to sufficiently describe or explain the medical process through which the July 25, 2007 work incident would have caused the claimed injuries. Accordingly, as she has failed to submit any probative medical evidence establishing that she sustained injuries to her left hand, wrist, arm and shoulder in the performance of duty, the Office properly denied her claim for compensation.

### **CONCLUSION**

The Board finds that the Office properly found that appellant failed to meet her burden of proof to establish that she sustained injuries to her left hand, left wrist, left arm and left shoulder in the performance of duty.

---

<sup>18</sup> The Board notes that Dr. Parnes made findings regarding a cervical condition, which he also attributed to the July 25, 2007 work incident. However, appellant did not claim a cervical injury based on the July 25, 2007 incident in her August 15, 2007 CA-1 form or at any time subsequently.

<sup>19</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: March 16, 2010  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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