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

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| **R.M., Appellant** | ) | |
| **and** | ) | **Docket No. 10-845** |
| | ) | **Issued: November 5, 2010** |
| **U.S. POSTAL SERVICE, POST OFFICE, Gary, IN, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On February 12, 2010 appellant filed a timely appeal from a November 17, 2009 merit decision of the Office of Workers' Compensation Programs. 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 sustained an injury on March 30, 2009 causally related to her employment.

### ***FACTUAL HISTORY***

On April 6, 2009 appellant, a 55-year-old mail processing clerk, filed a claim for traumatic injury to both arms. She attributed her condition to a March 30, 2009 incident when, because of a fire drill, she was forced to exit from the employing establishment at approximately 3:45 p.m. and was exposed to cold and inclement weather for approximately 15 to 20 minutes

while wearing a T-shirt.[1] In a supplemental statement dated April 2, 2009, appellant noted that, at first, she refused to leave the building as she was not dressed for the weather conditions. The employing establishment controverted appellant's claim.

Appellant submitted copies of weather reports from the internet which indicated that the high temperature in Gary reached 43 degrees on March 30, 2009, with a low of 30 degrees. She submitted results from diagnostic tests regarding a possible rotator cuff tear as well as investigative reports and a statement from a coworker concerning her initial reluctance to participate in the fire drill.

On April 7, 2009 Dr. Vinay Reddy, a Board-certified rheumatologist, released appellant from work because of an injury she sustained on March 30, 2009. He presented findings on examination and diagnosed cervical radiculopathy, right shoulder tendinopathy and left epicondylitis. Dr. Reddy noted that appellant had a history of oseteoarthritis of the thumbs. He noted that these conditions were exacerbated by the alleged incident. Dr. Reddy noted, "I am unclear how this could have happened as the patient did tell me that there was no physical job that she did when she was out in the cold." He concluded that the only possible explanation for appellant's condition was that exposure to cold and damp weather probably exacerbated her underlying arthritis. Dr. Reddy released appellant from work again on April 14 and 24, 2009, due to the March 30, 2009 injury.

In a progress note dated April 24, 2009, Dr. Reddy stated that cold and inclement weather since the last week of March affected appellant's neck and shoulders, producing a numbness sensation which radiated through her arms and produced a tingling sensation in her hands. On May 1, 2009 he released appellant to fully-duty work.

On May 29, 2009 Dr. Reddy presented findings on examination and diagnosed right shoulder tendinopathy with a partial thickness tear, left medial epicondylitis, degenerative joint disease in appellant's fingers, carpal tunnel syndrome and myofascial neck pain. He noted that "before the episode in March" appellant had been doing reasonably well, but that her symptoms had been exacerbated. On June 16 and 23, 2009 Dr. Reddy excused her from work due to tennis elbow and carpal tunnel.

By decision dated July 7, 2009, the Office accepted the March 30, 2009 incident, in which appellant participated in a fire drill. It denied her claim because the medical evidence of record did not establish that this incident caused her cervical or upper extremity conditions.

Appellant requested review of the written record on August 5, 2009.

On August 11, 2009 the Office received an August 5, 2009 note from Dr. Reddy who stated that appellant was seen on March 31, 2009 for "frost nib" which she sustained on the previous day when she participated in a fire drill at work. He described a frost nib as a

[1] The Board notes that the Office issued a Form CA-16. A properly executed Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989). The Form CA-16 issued to appellant did not authorize either examination or treatment and was therefore not properly executed.

nonfreezing cold tissue injury which caused part of the skin to be chilled but not frozen, which then caused significant pain to the affected areas as the skin rewarmed and blood flow was reestablished. Dr. Reddy stated that the dull continuous pain changed to a throbbing sensation in two or three days which could last from weeks to months until final tissue separation was complete.

In a decision dated November 17, 2009, the Office hearing representative affirmed the July 7, 2009 decision. She found that the medical reports of Dr. Reddy provided various diagnoses and that the physician failed to provide sufficient rationale for how exposure to 40 degree temperatures for 15 minutes would cause or contribute to any diagnosed condition.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of proof to establish the essential elements of her claim by the weight of the evidence,[3] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[4] As part of her 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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must 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 submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[7] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[8]

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

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *G.T.*, *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] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[8] *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

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.[9]

## ***ANALYSIS***

The Office accepted that the March 30, 2009 fire drill occurred as alleged and that appellant was exposed from 15 to 20 minutes to temperatures around 40 degrees. The Board finds that appellant did not establish that this employment incident caused an injury. Accordingly, the Board finds that the Office properly denied appellant's claim.

The reports of Dr. Reddy are of diminished probative value on causal relationship because the physician failed to provide a reasoned or detailed opinion explaining how the accepted employment incident caused the various conditions he diagnosed.[10] Dr. Reddy attributed appellant's absences from work to the accepted employment incident, but provided no reasoned explanation for his opinion on disability.

On April 7, 2009 Dr. Reddy diagnosed cervical radiculopathy, right shoulder tendinopathy and left epicondylitis. He noted appellant's history, that she was outside for the duration of a fire drill during the afternoon of March 30, 2009, but stated that it was "unclear" how this work incident could have caused the diagnosed conditions since appellant did not perform any work activities while she was outside. Dr. Reddy speculated that the only possible explanation would be that the cold weather exacerbated appellant's arthritis symptoms. The Board notes that Dr. Reddy listed a preexisting history of osteoarthritis of the thumbs but failed to explain how 15 to 20 minutes of exposure to 40 degree weather was sufficient to aggravate the underlying arthritis condition of the thumbs or cause the diagnosed upper extremity conditions. Use of the words "possible" and "probably" establish Dr. Reddy's opinion as speculative and of diminished probative value.[11] This evidence does not establish the element of causal relationship.

On August 5, 2009 Dr. Reddy diagnosed appellant with a "frost nib," which he attributed to her exposure on March 30, 2009. He did not explain the basis for this diagnosis or address how it related to her accepted exposure. While he provided a definition of the term as a nonfreezing cold tissue injury he did not specify which body part sustained "frost nib." Dr. Reddy stated that "frost nib" causes significant pain while the skin and blood rewarms, but not explain how long any rewarming process would take. The diagnosis of frost nib is not well explained as appellant was only exposed to temperatures of approximately 40 degree for 15 to 20 minutes. There was no discussion of what portion of appellant's skin was exposed or how the

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

[11] *Kathy Kelley*, 55 ECAB 206 (2004) (the Board has held that opinions such as, the implant may have ruptured and that the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion)

ambient air temperature, moisture or other weather conditions were sufficient that day to contribute to a specific injury or those conditions diagnosed by Dr. Reddy. While Dr. Reddy stated that the pain symptoms would continue until final tissue separation was complete, he did not provide any physical findings that appellant did, in fact, sustain tissue separation of any body part.

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 employment[14] or that work activities produce symptoms revelatory of an underlying condition[15] does not raise an inference of causal relationship between a claimed condition and an employment incident.

The medical evidence of record contains no reasoned discussion of causal relationship, one that soundly explains how the March 30, 2009 employment incident caused or aggravated a firm diagnosed medical condition. The Board finds that appellant has not established the essential element of causal relationship.

## ***CONCLUSION***

The Board finds that appellant has not established that she sustained an injury on March 30, 2009, as alleged.

[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 158 (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 November 17, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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