United States Department of Labor
Employees' Compensation Appeals Board

M.J., Appellant	)	
and	)	**Docket No. 10-1093**
	)	**Issued: November 12, 2010**
DEPARTMENT OF HOMELAND SECURITY, CITIZENSHIP & IMMIGRATION SERVICES, Hartford, CT, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 March 18, 2010 appellant filed a timely appeal from September 18, 2009 and January 28, 2010 decisions of the Office of Workers' Compensation Programs denying her traumatic injury 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 sustained a traumatic injury on July 22, 2009 while in the performance of duty.

FACTUAL HISTORY

On July 24, 2009 appellant, then a 50-year-old clerk, filed a traumatic injury claim alleging that on July 22, 2009 she injured her neck, back, arms and legs due to lifting heavy files and twisting and bending. Sherrie Bell stated on the claim form that she saw appellant pull files from drawers, put them in boxes and push carts filled with the files. The employing

establishment controverted appellant's claim, advising that her light-duty assignment was discontinued on July 21, 2009 due to lack of updated medical documentation.[1]

In a disability certificate and work capacity evaluation form dated July 31, 2009, Dr. Robert A. Mohr, an attending physician specializing in orthopedics, advised that appellant could return to work 45 days from that date. Appellant could perform light duty with permanent restrictions of no bending, lifting, twisting, squatting, kneeling or climbing; and sitting, walking, standing and reaching above the shoulder limited to 45 minutes and a weight limit of seven pounds when pushing or pulling carts.

By letter dated August 7, 2009, the Office asked appellant for additional information, including a detailed description as to how the July 22, 2009 injury occurred and medical evidence containing a medical history, diagnosis and a rationalized explanation as to how the diagnosed condition was causally related to the July 22, 2009 incident. No additional evidence was received.

By decision dated September 18, 2009, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained an injury on July 22, 2009 while in the performance of duty.

On September 24, 2009 appellant requested a hearing that was held on September 30, 2009. She testified that as of July 22, 2009 she was still being treated for her 2007 back injury. Appellant was due to retire on social security disability approximately one week after the hearing. She testified that on July 22, 2009 she lifted and moved 70 files weighing 10 to 30 pounds. Appellant did not see Dr. Mohr until July 30, 2009 because an appointment on that date had already been scheduled regarding her 2007 injury. She saw her primary care physician, a Dr. Parsons, after July 22, 2009 and prior to July 30, 2009. The hearing representative asked appellant to submit his report or office notes following the hearing.[2] On December 29, 2009 the employing establishment stated that the files she moved on July 22, 2009 did not exceed 10 pounds in weight.

By decision dated January 28, 2010, the Office denied modification of the September 18, 2009 decision.

LEGAL PRECEDENT

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.[3] Second, the employee must submit

[1] Appellant sustained a work-related lumbar spasm on October 24, 2007.

[2] No additional medical evidence was submitted.

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

medical evidence to establish that the employment incident caused a personal injury.[4] An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.

To establish a causal relationship between an employee's condition and any disability claimed and the employment event or incident, he or she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of 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 claimant.[5]

ANALYSIS

Appellant established the first component of fact of injury. The Office accepted that she lifted and moved files on July 22, 2009.

The second component of fact of injury is whether appellant sustained a medical condition as a result of the July 22, 2009 incident. In a disability certificate and work capacity evaluation form dated July 31, 2009, Dr. Mohr addressed work restrictions related to a 2007 employment injury. He did not obtain any history of the July 22, 2009 work incident. Therefore, Dr. Mohr's report does not establish that appellant sustained an injury on July 22, 2009 while in the performance of duty. Appellant testified at the hearing that she saw Dr. Parsons, her primary care physician, for the July 22, 2009 injury but she failed to submit any reports or notes from the physician.

The Office advised appellant of the medical evidence needed to establish her claim, including a report with a medical history, diagnosis and a rationalized explanation as to how the diagnosed condition was causally related to the July 22, 2009 incident. No such evidence was submitted.

Appellant failed to meet her burden of proof to establish that she sustained an injury on July 22, 2009 while in the performance of duty.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a traumatic injury on July 22, 2009 while in the performance of duty.

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

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

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 28, 2010 and September 18, 2009 are affirmed.

Issued: November 12, 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