United States Department of Labor
Employees' Compensation Appeals Board

S.W., Appellant	)	
and	)	**Docket No. 10-371**
	)	**Issued: October 14, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Macon, GA, Employer	)	

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 November 23, 2009 appellant filed a timely appeal from a November 2, 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 established she sustained an injury in the performance of duty on July 11, 2009 causally related to her employment.

Appellant argues that she has submitted all the medical evidence she has which should have been sufficient to grant her claim for medical compensation.

FACTUAL HISTORY

On July 15, 2009 appellant, a 40-year-old postal employee, filed a traumatic injury claim (Form CA-1) for left elbow pain which she attributes to a July 11, 2009 incident when the postal vehicle she was driving was involved in a motor vehicle accident.

Appellant submitted reports signed by a nurse practitioner and a note dated August 10, 2009 in which appellant described the events of July 11, 2009 and her symptoms.[1]

By decision dated August 26, 2009, the Office denied the claim because the evidence of record did not demonstrate that the established employment incident caused a medically-diagnosed injury.

In a September 21, 2009 report, Dr. Charles H. Hughes, Jr., a Board-certified orthopedic surgeon, presented findings on examination and diagnosed left lateral epicondylitis.

On October 2, 2009 appellant requested reconsideration.

By decision dated November 2, 2009, the Office affirmed its August 26, 2009 decision, finding the evidence of record did not demonstrate that the established employment incident caused a medically-diagnosed injury.

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

[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 CA-16 issued to appellant did not authorize examination or treatment and was therefore not properly executed.

[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).

[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).

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 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 appellant established the employment incident she deemed responsible for her condition. Appellant's burden is to demonstrate the established employment incident caused a medically-diagnosed injury. Causal relationship is a medical issue that can only be proven by probative medical opinion evidence. Appellant has not submitted sufficient medical opinion evidence supporting her claim and, consequently, the Board finds appellant has not established she sustained an injury in the performance of duty on July 11, 2009, causally related to her employment.

Appellant submitted reports signed by a nurse practitioner. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered "physicians" under the Act, their reports, notes and opinions do not constitute competent medical evidence.[10] Thus, these reports do not establish the required causal relationship between the established employment incident and a medically-diagnosed injury.

The relevant medical opinion evidence of record consists of a Dr. Hughes' September 21, 2009 report. Dr. Hughes diagnosed left lateral epicondylitis but did not explain how the established employment incident caused the conditions he diagnosed. For this reason, his report has little probative value and is insufficient to establish the requisite causal relationship.

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

[8] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

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

[10] 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

An award of compensation may not be based on surmise, conjecture or speculation.[11] 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.[12] The fact that a condition manifests itself or worsens during a period of employment[13] or that work activities produce symptoms revelatory of an underlying condition[14] does not raise an inference of causal relationship between a claimed condition and an employment incident.

Because appellant has not submitted competent medical opinion evidence containing a reasoned discussion of causal relationship, one that soundly explains how the accepted employment incident caused or aggravated a firmly diagnosed medical condition, the Board finds appellant has not established the essential element of causal relationship.

CONCLUSION

The Board finds appellant has not established she sustained an injury in the performance of duty on July 11, 2009, causally related to her employment.

[11] *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).

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

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

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

ORDER

IT IS HEREBY ORDERED THAT the November 2 and August 26, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 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