United States Department of Labor
Employees' Compensation Appeals Board

C.F., Appellant	)	
and	)	**Docket No. 10-1264**
	)	**Issued: January 19, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Modesto, CA, Employer	)	

Appearances:
Elaine Wallace, 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 April 2, 2010 appellant filed a timely appeal from a December 28, 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 an injury in the performance of duty on April 7, 2009.

FACTUAL HISTORY

On April 8, 2009 appellant, then a 52-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right arm injury on April 7, 2009 when she lifted a tub of mail. In a report dated April 7, 2009, Dr. Alexis Dasig, an occupational medicine specialist, provided a history that appellant had just returned to full-time work, lifted a tub of mail weighing 20 to 25 pounds and felt pain in the right elbow, shoulder and hand. Appellant had a history of a right carpal tunnel release and treatment for medial epicondylitis. Dr. Dasig diagnosed probable

ulnar neuropathy, right elbow. Appellant also submitted a duty status report (Form CA-17) from Dr. Dasig dated April 7, 2009 with a diagnosis of ulnar neuropathy and work restrictions outlined.

By letter dated April 21, 2009, the Office advised appellant to submit a detailed medical report regarding her claim. In a May 6, 2009 report, Dr. Paul Caviale, an orthopedic surgeon, listed a history that appellant worked modified duty until September 2007, when she underwent a right carpal tunnel release. Appellant did not return to work until April 7, 2009. Dr. Caviale stated that appellant sustained an injury on April 7, 2009 when she picked up a tub of mail and experienced pain. He provided results on examination and diagnosed right lateral epicondylitis and status post right carpal tunnel release. Dr. Caviale stated, "[Appellant] worked for one hour on April 7th of this year and had an aggravation of her preexisting condition, *i.e.*, her elbow pain became worse. The lateral epicondylitis was exacerbated by picking up a 25-pound box with the forearm pronated. [Appellant's] elbow pain was exacerbated by picking up the box."

In a decision dated June 8, 2009, the Office denied the claim for compensation. It found the medical evidence was insufficient to establish the claim. The record also contains identical decisions dated June 22 and July 22, 2009.

Appellant requested a hearing before an Office hearing representative, which was held on November 3, 2009. In a July 10, 2009 report, James Stanton, M.D., noted that a magnetic resonance imaging scan showed lateral epicondylitis.

By decision dated December 28, 2009, an Office hearing representative affirmed the denial of the claim. He found the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[1] The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of an in the course of employment."[2] An employee seeking benefits under the Act has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second

[1] 5 U.S.C. § 8102(a).

[2] *Valerie C. Boward*, 50 ECAB 126 (1998).

[3] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[4]

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. 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.[5]

ANALYSIS

The Office accepted that appellant was lifting a tub of mail on April 7, 2009. The issue is whether the medical evidence is sufficient to establish an injury causally related to the employment incident. Dr. Dasig treated appellant on April 7, 2009 and noted that appellant reported lifting mail. He diagnosed a probable ulnar neuropathy, without providing a rationalized medical opinion on causal relationship with the employment incident. The form medical report and treatment record did not adequately address causal relation.

In a May 6, 2009 report, Dr. Caviale also provided a history of an April 7, 2009 incident. He stated that appellant's preexisting lateral epicondylitis was exacerbated by lifting the tub of mail, without providing additional explanation or detail. He did not describe the nature and extent of any aggravation, with supporting medical rationale as to causal relationship with the employment incident. It is not sufficient to state that the underlying condition was exacerbated by an employment incident without explaining how the activity would contribute to or aggravate the condition.[6] Dr. Caviale noted only that she worked one hour and had an aggravation of her preexisting condition, *i.e.*, her elbow pain became worse.[7] The Board finds the medical evidence of record is of diminished probative value and is not sufficient to meet appellant's burden of proof.

On appeal, appellant notes that she had a prior claim from 2000 and submitted a report from a referee physician dated February 9, 2010. The Board can only consider evidence that was before the Office at the time of the December 28, 2009 decision.[8] For the reasons noted, the

[4] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[5] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[6] *See C.B.*, 60 ECAB ___ (Docket No. 08-1583, issued December 9, 2008) (physician stated that work on a specific date exacerbated prior cervical neck pathology, without providing medical rationale).

[7] A medical opinion not fortified by medical rationale is of diminished probative value. *See David L. Scott*, 55 ECAB 330 (2004).

[8] 20 C.F.R. § 501.2(c)(1).

incident of record was insufficient to establish an injury in the performance of duty on April 7, 2009.

CONCLUSION

The Board finds that appellant did not establish an injury in the performance of duty on April 7, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 28, 2009 is affirmed.

Issued: January 19, 2011
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