

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

B.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Buffalo, NY, Employer**

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**Docket No. 10-1268
Issued: January 4, 2011**

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 April 8, 2010 appellant filed a timely appeal from an October 19, 2009 merit decision of the Office of Workers' Compensation Programs denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act and 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 met her burden of proof to establish that she sustained an injury in the performance of duty.

FACTUAL HISTORY

On March 11, 2009 appellant, then a 27-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 20, 2008 she sustained a bruised, swollen bump to her right eye when she was getting out of her postal vehicle and was hit from behind by a car backing out. She did not stop working. The employing establishment indicated on the reverse side of the form that the injury was caused by a third party and that appellant was a carrier at the

time of the accident but refused medical treatment. Appellant first received medical care for this injury on December 6, 2008 at Bertrand Chafee Hospital.

By letter dated March 24, 2009, the Office advised appellant that additional factual information was needed and that no medical evidence in support of the claim had been received. Appellant was requested to describe in detail why she delayed in filing a Form CA-1 and to provide statements from any persons who witnessed her injury or had immediate knowledge of it. She was also requested to provide dates of examination and treatment, a history of injury given by her to a physician, a detailed description of any findings, a diagnosis and course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury.

Appellant submitted a November 20, 2008 accident report which indicated that she was legally parked when she was involved in a motor vehicle accident, suffering personal injury and property damage as a result.¹ The report stated that as she was exiting her vehicle, a post office vehicle struck the postal vehicle from behind, tearing off the rear bumper completely.

Appellant also submitted a December 6, 2008 report of a computerized tomography (CT) scan of the head from Dr. Jan Najdzionek, a Board-certified diagnostic radiologist. Her history was noted as multiple trauma and the scan was interpreted as normal with no acute intracranial hemorrhage identified.

By decision dated April 23, 2009, the Office denied appellant's claim finding that the factual basis of her claim was unclear or unknown and that there was no evidence that she sustained an injury in connection with the alleged work incident.

By letter dated May 19, 2009, appellant requested review of the written record. In support of her request, she submitted a March 19, 2009 report from Dr. Ronnie D. Shade, a Board-certified orthopedic surgeon, who diagnosed appellant with impingement syndrome of the right shoulder. Dr. Shade noted the date of injury as November 20, 2008.

Appellant also submitted December 6, 2008 emergency room reports from Bertrand Chafee Hospital. Dr. Rolland Williams, a treating physician, reported that appellant was complaining of a headache from a motor vehicle accident two weeks prior when she was rear ended by a vehicle. He diagnosed a contusion to the head secondary to motor vehicle accident and bruises of the right index and middle fingers.²

¹ The employing establishment indicated by check mark that appellant suffered personal injury and property damage. The accident report contains no narrative on record which establishes what appellant's personal injuries were.

² Appellant's finger injury was a result of her fingers getting slammed in a door while at work on December 6, 2008. She filed a separate claim for this injury (File No. xxxxxx918).

By decision dated October 19, 2009, the Office hearing representative affirmed the Office's April 23, 2009 decision.³

LEGAL PRECEDENT

An employee seeking benefits under the Act⁴ has the burden of establishing 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 Act⁵ and that an injury was sustained in the performance of duty.⁶ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

When an employee claims that she sustained an injury in the performance of duty she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.⁸ Once an employee establishes that she sustained an injury in the performance of duty, she has the burden of proof to establish that any subsequent medical condition or disability for work, for which she claims compensation is causally related to the accepted injury.⁹

ANALYSIS

The Office has accepted that appellant was involved in a motor vehicle accident on November 20, 2008. The Board finds, however, that appellant did not establish that she sustained a diagnosed medical condition causally related to the accepted incident.

Appellant sought treatment at Bertrand Chaffee Hospital emergency room on December 6, 2008. Dr. Najdzionek's reported appellant's history as multiple trauma but failed to identify what specifically the nature of the trauma was. He reported a normal CT scan of the head with no acute intracranial hemorrhage. As Dr. Najdzionek's report does not mention a work-related incident or name a specific injury, this report is insufficient to establish appellant's claim.

³ Following the Office's October 19, 2009 decision, appellant submitted new evidence to the Office. As this evidence was not before the Office at the time of its final decision, the Board may not review this evidence for the first time on appeal. 20 C.F.R. § 510.2(c)(1).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁸ See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). See *Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

⁹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

In the December 6, 2008 emergency room reports, Dr. Williams reported that appellant was complaining of a headache from a motor vehicle accident two weeks prior and diagnosed her with contusion to the head and bruises to the right index and middle fingers. He did not determine that appellant's condition was work related and did not offer a rationalized opinion on the causal relationship between appellant's diagnosed condition and the factors of employment implicated in the claim.¹⁰ Dr. Williams merely stated that appellant's headache was secondary to a motor vehicle accident but did not state when this accident occurred and how the incident caused appellant's headaches.

Dr. Williams did not offer any detail pertaining to appellant's prior medical history or treatment. Further, he did not evaluate appellant until two weeks after the November 20, 2008 motor vehicle accident. Dr. Williams' evaluation lacked a clear explanation, supported with medical evidence, of the causal connection between appellant's medical condition and her motor vehicle accident on November 20, 2008. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹¹ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹²

In a March 19, 2009 evaluation report, Dr. Shade diagnosed appellant with impingement syndrome of the right shoulder, noting the date of injury as November 20, 2008. While his medical note provides a diagnosis, it does not establish that this injury was a result of the November 20, 2008 motor vehicle accident accepted in this case. Simply stating a date of injury without identifying and explaining the cause of that injury is vague and speculative. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹³ Without medical reasoning explaining how appellant's motor vehicle accident caused her shoulder condition, the report is not sufficient to meet her burden of proof.¹⁴

The November 20, 2008 accident report establishes the factual element of appellant's claim. It does not, however, constitute medical evidence which is necessary to establish causal relationship. The record does not contain a rational medical report establishing that she sustained an injury due to the accepted incident. Thus, the Board finds that appellant did not meet her burden of proof in this case.

¹⁰ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹¹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹² See *Lee R. Haywood*, 48 ECAB 145 (1996).

¹³ *C.B.*, 61 ECAB ____ (Docket No. 09-2027, issued May 12, 2010); *S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009).

¹⁴ *C.B.*, 60 ECAB ____ (Docket No. 08-1583, issued December 9, 2008).

CONCLUSION

Appellant failed to meet her burden of proof to establish an injury causally related to the accepted November 20, 2008 motor vehicle accident.

ORDER

IT IS HEREBY ORDERED THAT the October 19, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2011
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