

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

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<b>E.W., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 11-327</b>
	)	<b>Issued: September 22, 2011</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Macon, GA, Employer</b>	)	
_____	)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Appellant, pro se</i>	
<i>Office of the Solicitor, for the Director</i>	

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 22, 2010 appellant filed an appeal of a merit decision of the Office of Workers' Compensation Programs (OWCP) dated September 29, 2010 denying her claim. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2 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 on August 14, 2010, as alleged.

**FACTUAL HISTORY**

On August 16, 2010 appellant, then a 39-year-old rural carrier associate, filed a traumatic injury claim alleging that on August 14, 2010 the back of her right hand was struck by lightning when she was delivering mail. She stopped work on August 14, 2010. Appellant submitted an

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

August 16, 2010 statement and an August 14, 2010 accident investigation worksheet which stated the cause was rain and lightening but there were no injury or sign of injuries on her hands. In an August 14, 2010 patient summary and instructions from an emergency room, the chief complaint was noted as being struck by lightening. Portions of the report including the diagnosis and healthcare provider are illegible. The employing establishment controverted the claim. It stated that appellant refused to identify the address where she was struck by lightening and that an investigation of mailboxes did not show signs of a lightening strike.

In an August 23, 2010 letter, OWCP requested appellant provide additional factual and medical evidence supportive of her claim, including medical evidence diagnosing a condition in connection with the claimed injury and a medical explanation as to how the reported work incident caused or aggravated a medical condition.

Appellant submitted an August 14, 2010 ambulance report and August 14, 2010 State of Georgia -- Patient Care Report that noted she was struck by lightening while her right hand was touching a metal mail box and that she was energized through right arm and immediately felt tingling. Complaints of right arm pain/numbness was reported. Certificate of treatment and return to work certificates from MedCenter Urgent Care and the urgent care centers of the Medical Center of Central Georgia were provided.

In an August 14, 2010 report, Dr. Gloria Kayfan, an osteopath and emergency medicine specialist, noted that appellant, a postal worker, was putting mail in a mailbox earlier in the day when she believed she was struck in the right hand by lightening. Complaints of tingling and numbness to the right hand were noted. A final diagnosis of possible electrocution was provided. On August 16, 2010 Dr. Krishna Patel, Board-certified in family medicine, noted the history of injury and diagnosed lightening accident/strike and right arm pain. On August 18, 2010 appellant presented to Dr. Timothy Longaker, Board-certified in family medicine, with right arm/side pain, and chest pain when taking deep breath. He released appellant to work on August 19, 2010. An August 18, 2010 x-ray report of the left ribs noted no fractures or abnormalities. In an August 23, 2010 hospital discharge documents, Dr. Randal Sugerman, a general surgeon, noted appellant had anxiety attacks since being struck by lightning on August 14, 2010 and diagnosed anxiety.

In an August 24, 2010 report, Dr. J. Ray Grant, Board-certified in family medicine, noted appellant had chest pain and right arm pain due to a possible lightening strike. He noted the history of injury and that she went to the emergency room on the date of injury and received x-rays and an electrocardiogram. Appellant was seen on three separate occasions for arm and chest pain with anxiety. She initially attributed being anxious to her supervisor telling her that, without physical evidence of injury from a lightening strike, workers' compensation would not cover the injury. Appellant later commented that she had been anxious from the date of the injury. She expressed a desire to return to work and noted that she had not been put back on the schedule. Dr. Grant noted that appellant was a substitute carrier who called in daily to check if work was available. He diagnosed anxiety. Based on his review of the emergency rooms reports, Dr. Grant opined that because there was no physical evidence of injury from a lightening strike, the cause of appellant's problems did not appear to be work related.

On August 30, 2010 Dr. Cornell Peters, Board-certified in family medicine, noted appellant was struck by lightning on August 14, 2010. He diagnosed hand and wrist pain, neck pain with radiculopathy and shoulder pain. X-rays of the right wrist and hand and right shoulder were ordered. A return to work certificate was submitted together with referrals to other health providers for blurred vision and a nerve conduction velocity (NCV) and electromyogram (EMG) studies. In a September 13, 2010 report, Dr. Peters diagnosed right hand radiculopathy, nerve pain and right hand weakness. New NCV and EMG studies were recommended. In a September 20, 2010 report, Dr. Peters diagnosed nerve pain with radiculopathy and mild neck tenderness. In a September 22, 2010 report, he diagnosed nerve pain with right arm radiculopathy which he opined was due to injury or sickness arising out of appellant's employment when lightning struck her. Dr. Peters advised that appellant was totally disabled from August 30 to September 22, 2010.

Appellant submitted notes from The Emergency Center which indicated that she was seen on September 2, 2010. A copy of a correction notation from a newspaper identified appellant as being struck by lightning while delivering mail.

By decision dated September 29, 2010, OWCP denied appellant's claim. It found that while the lightning incident was established, the medical evidence was insufficient to support a medical condition related to the August 14, 2010 incidents.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury<sup>2</sup> was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused

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<sup>2</sup> OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

<sup>3</sup> *E.K.*, Docket No. 09-1827, (issued April 21, 2010). See *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

a personal injury.<sup>4</sup> An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>5</sup>

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.<sup>6</sup>

### ANALYSIS

OWCP accepted, and the record supports, that appellant experienced a lightning strike on August 14, 2010. Several conditions were diagnosed in connection with the accepted employment incident. The issue is whether appellant submitted sufficient medical evidence to establish that the employment incident caused an injury. The Board finds that the medical evidence is insufficient to establish that the lightning incident caused or aggravated a right hand or other medical condition.

On August 24, 2010 Dr. Grant noted that appellant had chest pain and right arm pain due to possible lightening strike and diagnosed an anxiety condition. Based on his review of the emergency room records, he opined that the cause of appellant's problems was not work related as there was no physical evidence of a lightening strike.<sup>7</sup> In relating the onset of the anxiety condition, Dr. Grant additionally noted that appellant first attributed it to comments from her supervisor regarding her claim and then to the day of her injury. This report, at best, provides only equivocal support for an anxiety condition arising from the incident at work. Dr. Grant provided more than one possible cause of appellant's present condition.<sup>8</sup> He did not provide reasoning in which he explained to a reasonable degree of medical certainty how a diagnosed anxiety condition resulted from the August 14, 2010 lightning strike. Dr. Grant's report is insufficient to establish that appellant sustained an anxiety condition.

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<sup>4</sup> In clear-cut traumatic injury claims where fact of injury is established and competent to cause the condition described, such as a fall from a scaffold resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3d(2) (June 1995). In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required. *Id.* at Chapter 2.805.3d(3).

<sup>5</sup> *Id.* See *John J. Carlone*, 41 ECAB 354 (1989); *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>6</sup> See *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>7</sup> The Board notes that its precedent does not require a physical injury for an anxiety condition to be found employment related.

<sup>8</sup> *D.D.*, 57 ECAB 734 (2006) (medical opinions that are speculative or equivocal in character are of diminished probative value).

Dr. Peters diagnosed right hand/arm radiculopathy and mild neck tenderness. On September 22, 2010 he opined that appellant's nerve pain with right arm radiculopathy was due to the lightning strike and that she was totally disabled from August 30 to September 22, 2010. Dr. Peters failed to provide a rationalized opinion addressing how this condition was employment related. This lack of rationale greatly reduces the probative value of his opinion to the extent the condition affects appellant's right upper extremity.<sup>9</sup>

Dr. Kayfan noted appellant's complaints of tingling and numbness to the right hand on August 14, 2010, the date of the incident. She did not offer any opinion regarding the cause of appellant's condition. To the extent that she supported causal relationship, Dr. Kayfan's notation of possible electrocution is speculative or equivocal in character. Dr. Kayfan offered no explanation as to how the August 14, 2010 lightning strike caused or aggravated a diagnosed condition. Dr. Sugerman diagnosed appellant with anxiety. While he noted that she had anxiety attacks since being struck by lightning August 14, 2010, he failed to provide any explanation how such a condition resulted from the accepted employment incident or her employment. The reports from Drs. Patel and Longaker also did not explain how the August 14, 2010 lightning strike caused or aggravated a diagnosed condition. Thus, these reports are not sufficient to meet appellant's burden of proof.

The diagnostic reports are insufficient to establish the claim as they fail to address the medical issue of causal relationship.<sup>10</sup> The documents from the urgent care centers and hospital emergency rooms that are not from a physician are of no probative medical value in establishing that the work incident caused or contributed to a medical condition.<sup>11</sup>

Appellant has not submitted sufficient rationalized medical evidence to support her claim that she sustained an injury causally related to the August 14, 2010 employment incidents. She has failed to meet her burden of proof. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.<sup>12</sup> An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.<sup>13</sup> Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and OWCP properly denied her claim for compensation.

On appeal, appellant expressed her frustration regarding the processing of her claim. For the reasons set forth, appellant's claim was denied based on the finding that the medical evidence of record was insufficient to establish causal relation. Appellant may submit new evidence or

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<sup>9</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>10</sup> *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

<sup>11</sup> *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

<sup>12</sup> *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>13</sup> *D.D.*, *supra* note 8.

argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury on August 14, 2010, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 29, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 22, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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