

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

L.C., Appellant)
)
)
and) **Docket No. 14-104**
) **Issued: March 24, 2014**
)
DEPARTMENT OF TREASURY, INTERNAL)
REVENUE SERVICE, Richmond, CA, Employer)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 21, 2013 appellant filed a timely appeal from a July 18, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) 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 has established that she sustained an injury in the performance of duty on May 22, 2013.

FACTUAL HISTORY

Appellant, a 50-year-old contact service representative, filed a Form CA-1 claim for benefits on June 3, 2013, alleging that she experienced pain in her right arm when an elevator door closed on her right shoulder on May 22, 2013.

¹ 5 U.S.C. § 8101 *et seq.*

By letter dated June 13, 2013, OWCP advised appellant that she needed to submit additional factual and medical evidence in support of her claim. It stated that she had 30 days to submit the requested information.

In a report dated July 11, 2013, Dr. Kenneth W. Gillanders, a chiropractor, stated that he had been treating appellant for a work related injury which occurred on May 22, 2013 when she was squeezed between the elevator doors in her building on her way to work. He advised that she was injured when the doors compressed the right shoulder and pinned the right sided mid-back to the door post. Dr. Gillanders stated that appellant had complaints of mid-back pain, front right-sided chest pain, neck pain and headaches. He stated that on examination her injury was consistent with a right rotator cuff sprain/strain, hyperflexion/extension to the cervical spine and aggravation to an old intervertebral disc herniation to the lower cervical spine. Dr. Gillanders advised that appellant had a history of lower back pain and that he had been treating her for neck and lower back pain for several years; he asserted that the lower back and neck became substantially more symptomatic since the May 22, 2013 work incident.

Dr. Gillander asserted that the neck aggravation caused moderate to severe brachial neuritis radiating into appellant's finger tips. He also noted constant pain and numbness to the lateral right shoulder, with myospasm to the trapezius, pectoralis major with limited range of motion on flexion, extension, abduction and internal rotation. Dr. Gillander related that he had placed appellant on weekly updates of temporary total disability since May 22, 2013 and prescribed home stretching and exercising; he also attempted having her sit at her home computer, mocking up a similar routine to the work environment to see if she could tolerate desk work. He stated, however, that the mock up home desk work continued to aggravate her neck, right shoulder and lower back. Dr. Gillander advised that although this type of injury usually took four to six weeks to resolve, it had been complicated by the flare up of the disc in her neck. He recommended that appellant undergo a magnetic resonance imaging [MRI] scan if her injury was unresolved after 10-12 weeks of active treatment and indicated that he would explore the possibility of microdiscectomy surgery. Dr. Gillanders also submitted several disability leave slips from May and June 2013.

By decision dated July 18, 2013, OWCP denied appellant's claim, finding that she failed to submit medical evidence in support of her claim that she sustained an injury in the performance of duty on May 22, 2013.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing that 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 Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every

² 5 U.S.C. §8101 *et seq.*

³ *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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. 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.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

FECA however defines the term physician to include chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.⁷

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant’s condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

It is uncontested that appellant experienced pain in her right arm when an elevator closed on her right shoulder on May 22, 2013. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.¹⁰ Appellant has not submitted rationalized, probative medical evidence to establish that the May 22, 2013 employment incident caused a personal injury and that the work accident would have been competent to cause the claimed injury.

Appellant submitted the July 11, 2013 report and disability slips from Dr. Gillanders, who noted continued complaints of mid-back pain, front right-sided chest pain, neck pain, right

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term “injury,” see 20 C.F.R. §10.5(ee).

⁷ 5 U.S.C. § 8101 (2). *Jay K. Tomokiyo*, 51 ECAB 361 (2000); see also *Charley V.B. Harley*, 2 ECAB 208 (1949).

⁸ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

¹⁰ *Carlone*, *supra* note 5.

shoulder pain, numbness radiating to the fingertips and headaches. He diagnosed right rotator cuff sprain/strain, hyperflexion/extension to the cervical spine and aggravation of an old intervertebral disc herniation to the lower cervical spine. Dr. Gillanders stated that appellant had a history of lower back pain and that her lower back and neck became substantially more symptomatic since the May 22, 2013 work incident.

While Dr. Gillander's report diagnosed a right rotator cuff strain and noted complaints of right shoulder, right arm, neck, mid-back, and low back pain and numbness, it does not constitute medical evidence pursuant to Section 8101(2) because he did not provide a diagnosis of subluxation based on X-ray results.¹¹ Dr. Gillander is therefore not considered a physician under FECA. The Board thus finds that his July 11, 2013 report did not constitute medical evidence and therefore did not provide a probative, rationalized medical opinion regarding whether the May 22, 2013 work incident caused a personal injury.

Appellant failed to provide a rationalized, probative medical opinion from a physician which addresses or explain how the May 22, 2013 work incident would have been competent to cause the claimed right arm, right shoulder, neck and middle back conditions. OWCP advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the May 22, 2013 work accident would have caused the claimed injury. Accordingly, she did not establish that she sustained an injury in the performance of duty. OWCP properly denied appellant's claim for compensation.

Appellant may submit new evidence or 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 failed to meet her burden of proof to establish that she sustained an injury in the performance of duty on May 22, 2013.

¹¹ See 5 U.S.C § 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the July 18, 2013 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 24, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board