

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

E.Z., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
U.S. COAST GUARD, Washington, DC,
Employer**

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**Docket No. 14-274
Issued: March 16, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 20, 2013 appellant filed a timely appeal from the September 9, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied her injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether the September 11, 2012 work incident caused an injury.

FACTUAL HISTORY

On September 17, 2011 appellant, a 30-year-old office automation clerk, filed a traumatic injury claim alleging that she sustained an electric shock in the performance of duty on

¹ 5 U.S.C. § 8101 *et seq.*

September 11, 2012 when she plugged in her cell phone charger. The shock ran through her right hand and up her arm.

Dr. Miriam C. Dinatale, the attending Board-certified family practice physician, examined appellant on September 13, 2012. She noted a normal electrocardiogram (EKG) but decreased sensation to touch of the right arm and hand. Appellant had occasional heart palpitations and sinus tachycardia, but was otherwise normal. Dr. Dinatale diagnosed electrocution with resulting musculoskeletal pain. She completed an attending physician's form report. With an affirmative mark, Dr. Dinatale indicated that appellant's condition was caused or aggravated by the employment incident. "Patient was initially symptom free but since electrocution has experienced chest pain."

In January 2013 Dr. Dinatale reviewed appellant's medical records. She noted that appellant was electrocuted on September 11, 2012, and since that time had experienced severe chest wall pain and intermittent palpitations. Appellant's physical examination had been unremarkable. "At this time EKG and a 48 Holter (heart) monitor have been unremarkable." Dr. Dinatale diagnosed electrocution and chest wall pain. She offered an opinion on causal relationship: "[Appellant] was previously pain-free but after her electrocution has had constant chest pain. It is my opinion that the electrocution has caused her chest wall pain."

Dr. Dinatale completed another attending physician's form report on January 11, 2013. Appellant's physical examination, EKG and heart monitor were normal. Dr. Dinatale diagnosed electrocution and indicated with an affirmative mark that appellant's condition was caused or aggravated by the work incident. "Patient was asymptomatic before electrocution and chest wall pain developed afterwards."

On February 7, 2013 OWCP denied appellant's injury claim. It found that the September 11, 2012 work incident occurred as alleged, but the medical evidence did not establish the element of causal relationship. Appellant requested an oral hearing.

Dr. Alexander J. Menze, a Board-certified neurologist, examined appellant on February 28, 2013. Appellant presented with a complaint of numbness in the right arm. Her examination was notable for decreased sensation to temperature, pinprick and light touch in the right upper extremity with preserved strength, range of motion and tone. Symptoms were more pronounced in the right ulnar distribution than in the median sensory distribution. Nerve conduction studies were notable for slowed nerve conduction velocity of the right ulnar sensory nerve. "There is electrophysiological evidence of a right ulnar sensory neuropathy. This is consistent with the patient's history of electric shock." Dr. Menze found that appellant was not debilitated secondary to her condition.

Dr. Joshua A. Thomas, a Board-certified physiatrist, completed an attending physician's form report on March 12, 2013. He diagnosed cervical disc disease, possible radiculitis and cervical spine spasm. Dr. Thomas indicated with an affirmative mark that appellant's condition was caused or aggravated by the September 11, 2012 work incident.

In a decision dated September 9, 2013, an OWCP hearing representative affirmed the denial of appellant's injury claim. He found that the medical evidence submitted at that time

failed to provide a firm medical diagnosis in connection with the accepted work incident. Dr. Dinatale found that appellant's physical examination and test results following the work incident were unremarkable. Although she noted that appellant experienced chest pain following the incident, this did not establish that an injury had occurred. Although appellant had provided medical evidence diagnosing several identifiable medical conditions, the hearing representative noted that no physician had offered a reasoned opinion explaining how the work incident had caused or contributed to any of the diagnosed medical conditions.

Appellant's representative requested time to submit additional medical evidence to support the claim. The hearing representative noted, however, that as of the date of the decision, no additional documentation was received. The record shows that on the same day the hearing representative issued his decision, appellant's representative faxed an August 19, 2013 report from Dr. Robert D. Gerwin, a Board-certified neurologist, who addressed the issue of causal relationship.

On appeal, appellant addressed Dr. Gerwin's August 19, 2013 report and a July 10, 2013 report from Dr. Thomas, which she submitted to OWCP on October 28, 2013.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.³

Causal relationship is a medical issue,⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

² 5 U.S.C. § 8102(a).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

When a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.⁸ The claimant's burden requires an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.

ANALYSIS

OWCP accepts that the September 11, 2012 work incident occurred as alleged. Appellant has therefore met her burden to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The questions that remain are whether this incident caused an injury.

OWCP reviewed the medical evidence and found that no physician had offered a reasoned opinion explaining how the work incident had caused or contributed to any diagnosed medical condition. The record shows, however, that OWCP did not review the August 19, 2013 report from Dr. Gerwin, a neurologist, who addressed the issue of causal relationship. OWCP received this report on the same day it issued its September 9, 2013 decision.

In the case of *William A. Couch*,⁹ OWCP did not review medical evidence received four days prior to the issuance of its final decision denying the claim. The Board set aside the final decision and remanded the case for OWCP to consider this evidence fully. The Board explained that its jurisdiction of a case is limited to reviewing the evidence that was before OWCP at the time of its final decision,¹⁰ and that Board decisions are final as to the subject matter appealed.¹¹ Accordingly, it was critical that OWCP review all evidence relevant to that subject matter and received by OWCP prior to the issuance of its final decision.

The Board extended this principle to the case of *Linda Johnson*.¹² In *Johnson*, OWCP did not review medical evidence received on the same day it issued its final decision denying the claim. The Board found that the principle of *Couch* applied with equal force and remanded the case for a proper review of the evidence and an appropriate final decision.

The record establishes that OWCP received Dr. Gerwin's August 19, 2013 report addressing causal relationship on the same day it issued its September 9, 2013 decision. OWCP did not consider this evidence in denying appellant's claim. Appellant's representative was allowed time to submit additional medical evidence to support the claim, but according to OWCP hearing representative, no additional documentation was received. He did not address this report in his decision.

⁸ *E.g.*, *Lillian M. Jones*, 34 ECAB 379 (1982).

⁹ 41 ECAB 548 (1990).

¹⁰ 20 C.F.R. § 501.2(c).

¹¹ *Id.* at § 501.6(c).

¹² 45 ECAB 439 (1994).

In accordance with the principle set forth in *Couch* and *Johnson*, the Board finds that the case is not in posture for decision. The Board will set aside OWCP's September 9, 2013 decision denying appellant's claim and will remand the case to OWCP for consideration of the evidence and an appropriate final decision, with full review rights, on appellant's traumatic injury claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: March 16, 2015
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board