United States Department of Labor
Employees' Compensation Appeals Board

B.M., Appellant	)	
and	)	**Docket No. 14-1986**
	)	**Issued: March 18, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Magna, UT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 15, 2014 appellant filed a timely appeal of an August 14, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained a traumatic injury on April 30, 2014 in the performance of duty.

FACTUAL HISTORY

On May 2, 2014 appellant, then a 52-year-old clerk, filed a traumatic injury claim alleging that on April 30, 2014 she was throwing bundles of mail when her right elbow began to hurt. She continued to work and, by the following morning, Thursday, she could not move her

[1] 5 U.S.C. § 8101 *et seq.*

arm. Appellant provided a duty status report dated May 2, 2014 completed by the employing establishment with a typewritten date of injury of May 2, 2014. The handwritten history indicated that she injured her right elbow while throwing bundles of mail on Wednesday. Carol Rasmussen, a nurse practitioner, diagnosed lateral epicondylitis and indicated that appellant's oral history corresponded to the form. Appellant found right elbow pain and reduced range of motion. Ms. Rasmussen recommended light duty with no lifting. In a separate form dated May 20, 2014, with a typewritten date of injury of June 2, 2014, a physician's assistant released appellant to return to work on June 2, 2014.

On June 10, 2014 the employing establishment disputed appellant's claim noting that there was no medical evidence signed by a physician and that she was released to return to full duty on June 2, 2014.

OWCP requested additional factual and medical evidence in a letter dated July 10, 2014. Specifically, it requested that appellant provide additional factual evidence substantiating the employment events and medical evidence of a diagnosed condition resulting from the injury from a physician. OWCP requested that she complete an attached questionnaire and informed her that neither a nurse practitioner nor a physician's assistant was considered a physician for the purposes of FECA.

Dr. Peter R. Silvero, a Board-certified orthopedic surgeon, examined appellant on July 25, 2014 and stated that she sustained a right arm injury on April 28, 2014. He stated that she was lifting heavy bundles of mail on that date and that, the next morning, her right elbow was very sore. Dr. Silvero diagnosed right elbow lateral epicondylitis due to heavy lifting at the employing establishment. He provided work restrictions of no lifting more than five pounds with her right hand and no pushing or pulling with her right hand. Dr. Silvero further recommended that appellant have a 15-minute break every hour or be limited to six hours of work a day. He completed a form report dated July 25, 2014 and repeated his restrictions. This form was completed in part by the employing establishment and indicated that appellant's date of injury as May 2, 2014.

By decision dated August 14, 2014, OWCP denied appellant's traumatic injury claim finding that she had not submitted sufficient factual evidence to establish that the employment incident occurred as alleged. It noted that she did not respond to the request for additional necessary information and that there was conflicting evidence regarding the date of injury.

LEGAL PRECEDENT

OWCP defines 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."[2] In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP 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

[2] 20 C.F.R. § 10.5(ee).

component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

With respect to the first component of fact of injury, the employee has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[4]

ANALYSIS

Appellant filed a claim on May 2, 2014 and alleged that on April 30, 2014 she injured her right elbow throwing mail in the performance of duty. She asserted that her elbow began to hurt performing this duty and that, the following morning, she could not move her arm. The employing establishment provided her with a series of duty status reports completed with typewritten dates of injury including May 2 and June 2, 2014. Appellant consistently reported her injury occurring on Wednesday, April 30, 3014 to her medical providers and on her claim form. She also consistently stated that she had increased arm pain on Thursday, May 1, 2014. The Board finds that appellant has provided sufficient factual evidence in support of her claim that she injured her right elbow on April 30, 2014 while throwing bundles of mail in the performance of duty. Appellant's statements are consistent with the surrounding facts and circumstances and her subsequent course of action. The only inconsistencies in the evidence arise from the employing establishment's selection of May 2 or June 2, 2014 as the date of injury on the duty status forms that it completed. Appellant provided timely notification of injury to the employing establishment and OWCP, sought treatment with medical providers and stopped work shortly after her employment incident. The Board finds that the weight of the evidence establishes that the employment incident occurred as alleged and that her statement has not been refuted by strong or persuasive evidence.

However, the Board finds that appellant has not submitted the necessary medical evidence to establish a causal relationship between her accepted employment event of throwing bundles of mail on May 30, 2014 and her diagnosed right lateral epicondylitis. The only medical

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *D.B.*, 58 ECAB 464, 466-67 (2007).

evidence in the record is the July 25, 2014 report from Dr. Silvero.[5] While Dr. Silvero provides an opinion that appellant's diagnosed lateral epicondylitis was due to her employment activities, stating that her right elbow lateral epicondylitis was due to heavy lifting at the employing establishment, this opinion is not sufficiently rationalized to establish her claim. There is no factual evidence in the record regarding the weight of the bundles of mail which appellant threw and whether these bundles were in fact heavy. Appellant also failed to indicate the number of bundles she processed on April 30, 2014. Furthermore, Dr. Silvero did not provide the necessary medical rationale to establish how and why lifting bundles of mail in the performance of duty would result in right lateral epicondylitis on April 30, 2014. A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[6] Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.[7]

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 has established the first element of a traumatic injury claim, that the employment incident occurred on April 30, 2014. The Board further finds that she has not submitted the necessary detailed medical opinion evidence to establish that the April 30, 2014 incident resulted in a medical condition.

[5] The Board notes that neither Ms. Rasmussen, a nurse practitioner, nor the physician assistant who released appellant to work are physicians for the purposes of FECA and their reports cannot constitute medical evidence. *See* 5 U.S.C. § 8101(2); *K.C.*, Docket No. 14-757 (issued August 4, 2014); *Vickey C. Randell*, 51 ECAB 357 (2000) (regarding physical therapists); *Lyle E. Dayberry*, 49 ECAB 369 (1998) (regarding physician's assistants).

[6] *T.F.*, 58 ECAB 128 (2006).

[7] *A.D.*, 58 ECAB 149 (2006).

ORDER

IT IS HEREBY ORDERED THAT the August 14, 2014 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: March 18, 2015
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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