

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

C.B., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
CITIZENSHIP & IMMIGRATION SERVICES,)
Los Angeles, CA, Employer)

Docket No. 15-1350
Issued: March 18, 2016

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 1, 2015 appellant filed a timely appeal from a May 19, 2015 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 met her burden of proof to establish a traumatic injury in the performance of duty on March 12, 2013.

FACTUAL HISTORY

On April 10, 2013 appellant, then a 44-year-old immigration services officer, filed a traumatic injury claim (Form CA-1) alleging that on March 12, 2013 she injured her right

¹ 5 U.S.C. § 8101 *et seq.*

shoulder and right side of her neck when she carried a heavy file and opened a heavy door. She stopped work on March 12, 2013 and returned to work on March 13, 2013. The employing establishment noted that it had not received notification of this injury until the date of filing appellant's claim.

In a report dated March 15, 2013, Dr. James Mitchner, Board-certified in occupational medicine, diagnosed appellant with a shoulder strain of the right trapezius muscle. Appellant indicated that she had developed right trapezius pain from performing duties of her employment, and that "over the last few months pain has developed in the same area as before." Dr. Mitchner further noted that appellant denied any direct trauma or known new injury. He noted that she had job responsibilities of forceful grasping for up to 6+ hours per day; repetitive bending, twisting, and squatting; and prolonged computer work or typing for up to 6+ hours per day. Dr. Mitchner recommended restricted work duties for the period March 15 through 22, 2013 of reaching above her shoulder for no more than 20 percent of her shift and no lifting over 10 pounds. He recommended physical therapy, which OWCP authorized on June 26, 2013.

In a work status report dated March 15, 2013, Dr. Mitchner extended appellant's work restrictions through March 22, 2013 and noted a date of injury of July 27, 2012. In subsequent reports, he extended her restrictions through June 27, 2013 and listed the date of injury as July 28, 2012 or March 12, 2013.

In a report dated June 27, 2013, Dr. Mitchner stated that appellant's condition had not resolved and that activities of daily living requiring reaching above the shoulder level were painful and restricted. He noted that appellant had a history of a previous right shoulder injury and extended her work restrictions through July 11, 2013.

By letter dated July 12, 2013, OWCP notified appellant that her claim had been opened for formal adjudication at her request. It stated that she had not submitted sufficient medical evidence to establish that her injury resulted from activities of her federal employment. OWCP afforded appellant 30 days to submit additional evidence and to respond to its inquiries. In particular, it requested clarification as to whether she was filing a claim for occupational disease or traumatic injury.

On July 12, 2013 appellant told Dr. Mitchner that her shoulder and neck began to bother her on March 12, 2013. She had pushed open a heavy door for a customer, after which she began to feel pain in her right shoulder and neck. Dr. Mitchner stated, "The mechanism of action of the patient pushing open a heavy door on March 12, 2013 caused [appellant's] right shoulder and neck injuries." He recommended a magnetic resonance imaging (MRI) scan of appellant's right shoulder for persistent pain that had not resolved with physical therapy, activity restriction, or a home exercise program, in order to rule out the possibility of a rotator cuff tear. Dr. Mitchner extended her work restrictions through August 2, 2013.

By decision dated August 13, 2013, OWCP denied appellant's claim for compensation. It found that she had not submitted sufficient evidence to establish that the event occurred as described, because it was not clear whether she was filing a claim for traumatic injury or occupational disease. OWCP noted that the medical reports were contradictory as to how

appellant's injury occurred and that it had not received a response to its inquiry to clarify the mechanism of injury.

In a report dated August 2, 2013, Dr. Mitchner extended appellant's work restrictions through August 23, 2013.

On September 11, 2013 appellant requested an oral hearing before an OWCP hearing representative. The hearing was held on March 13, 2014. The hearing officer noted that appellant had nine prior claims for work injuries or conditions and one subsequent claim for an employment injury or condition, several of which involved injuries to the right shoulder or neck. Appellant stated that she had not received OWCP's July 12, 2013 development letter and that it might have been taken by a neighbor. She explained that on March 12, 2013 she opened a heavy door for a customer to enter a work area, using her right hand and arm. Shortly afterward, appellant's shoulder began to bother her. She stated that she then notified her manager that she was going to leave for the day as she injured her shoulder. Appellant told another manager that she had possibly reinjured her arm because she had injured the same shoulder the previous year. She noted that in July 2012 she had been diagnosed with a work-related right shoulder sprain or strain, which eventually resolved. The hearing representative noted that Dr. Mitchner's reports were inconsistent with appellant's history of injury, and that she would need for him to reconcile that inconsistency. She stated that it appeared that appellant was not claiming a recurrence, but a new traumatic injury. Appellant noted that she had asked OWCP to formally adjudicate the claim so that she could buy back leave that she had used to attend physical therapy appointments.

Appellant submitted a narrative statement in which she reiterated the timeline of her interactions with OWCP and her physician. The statement was consistent with and substantially the same as her testimony at the oral hearing. Appellant also resubmitted Dr. Mitchner's previous reports.

On April 12, 2013 Dr. Mitchner completed a "first report of occupational injury for appellant's condition." He noted both that appellant "denied any prior injury or disability associated with the above claimed body parts" and that appellant had a history of a previous right shoulder injury. Dr. Mitchner stated that his findings were consistent with appellant's account of injury.

In a report dated August 2, 2013, Dr. Mitchner stated that appellant had mild right shoulder pain that periodically traveled down the neck and arm. He noted that she had a previous right shoulder injury and listed her date of injury as March 12, 2013. Dr. Mitchner extended her work restrictions through August 23, 2013.

By decision dated May 20, 2014, the hearing representative affirmed OWCP's August 13, 2013 decision. However, she modified the basis for denial, finding that appellant had not submitted sufficient medical evidence to establish that the incident of March 12, 2013 caused appellant's right shoulder and neck condition.

On February 18, 2015 appellant requested reconsideration of OWCP's May 20, 2014 decision. With her request, she submitted a statement from a supervisor noting that appellant

had informed him that her shoulder was bothering her on March 12, 2013 and that she would be taking the rest of the day off.

In a report dated December 11, 2014, Dr. Mitchner responded to the hearing representative's decision. He stated:

“What I can say in this case is that the patient denies any outside activities that could have injured her right shoulder.... To the best the patient can determine she believes she injured her right shoulder while pushing a door open for a customer against firm resistance. This mechanism is not uncommon if the resistance is sufficient and the patient's arm is extended while pushing the door open leaving the shoulder joint vulnerable to injury due to the leverage the resistance causes across the distance of an extended arm on the shoulder. Much the same way [a] floor jack easily raises the car due to the extended leverage arm, an extended arm pushing open a door with sufficient resistance can strain the shoulder tendons and ligaments as well as a trapezius muscle which connects the shoulder to the base of the neck. In questioning the patient, she initially felt the injury that occurred on March 12, 2013 was an aggravation/flare up of a previous shoulder injury. However, in retrospect [appellant] believes she made a mistake and filed the wrong type of injury form. She believes this March 12, 2013 injury to her right shoulder was a new incident. I am recommending the patient's right shoulder and trapezius strain be accepted and an MRI [scan] performed to rule out the possibility of a rotator cuff tear. If the patient's right shoulder sustained a rotator cuff tear, patients are often still symptomatic until further treatment is obtained. If the right shoulder MRI [scan] reveals there is no rotator cuff tear then this March 15, 2013 injury can be closed.”

By decision dated May 19, 2015, OWCP reviewed the merits of appellant's claim and denied modification of their previous decision. It noted that Dr. Mitchner had not yet offered an opinion of his own regarding the causation of appellant's injury, but instead had relied only upon what appellant believed.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 filed within the applicable time limitation; that an injury was sustained while 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 compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

² *Supra* note 1.

³ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

⁴ *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

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.⁵ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁶ 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.⁷

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁸ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁰ 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 compensable employment factors.¹¹ 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.¹²

ANALYSIS

The Board finds that the medical evidence submitted by appellant is insufficient to establish that the incident of March 12, 2013 caused or aggravated appellant's diagnosed medical conditions.

In the initial report OWCP received from Dr. Mitchner, dated March 15, 2013, he indicated that appellant had experienced shoulder pain over the past few months, and that

⁵ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3 at n.5.

⁶ *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

⁷ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 3 at n.5.

⁸ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁹ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹⁰ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

¹¹ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹² *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

appellant had denied any direct trauma or new injury. Appellant thereafter submitted two reports from Dr. Mitchner containing his opinion on the causal relationship between her diagnosed right shoulder and neck conditions and the incident of March 12, 2013. In a July 12, 2013 report, Dr. Mitchner stated, “The mechanism of action of the patient pushing open a heavy door on March 12, 2013 caused [appellant’s] right shoulder and neck injuries.” This opinion is not rationalized, as it does not contain any medical or biomechanical explanation regarding how he arrived at that conclusion. Instead it merely states Dr. Mitchner’s opinion, without supportive medical reasoning. Dr. Mitchner also does not explain why his earlier report had referred to prior months of shoulder pain, and no new injury. Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.¹³ Lacking such an explanation, Dr. Mitchner’s July 12, 2013 report is not sufficient to establish a causal relationship between the events of March 12, 2013 and appellant’s diagnosed conditions.

In a report dated December 11, 2014, Dr. Mitchner communicated appellant’s opinions as to the cause of her conditions and noted that the type of injury claimed by appellant was “not uncommon” if the circumstances of the alleged injury included sufficient resistance while pushing a door open. Dr. Mitchner’s December 11, 2014 report does not contain language of reasonable medical certainty. Rather, it merely paraphrases appellant’s statements and beliefs as to the cause of her conditions and states that the type of injury claimed by appellant is “not uncommon” under the described circumstances. Stating that an injury is “not uncommon” under a given set of circumstances does not directly address the specific circumstances of the present claim and does not express reasonable medical certainty -- it is, instead, equivocal and speculative language concerning the cause of her conditions. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to her federal employment; and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹⁴ As such, Dr. Mitchner’s reports are insufficient to establish appellant’s claim for right neck and shoulder conditions.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to a March 12, 2013 employment incident, she has not met her burden of proof to establish a claim.

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.

¹³ *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

¹⁴ *A.D.*, 58 ECAB 149 (2006).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on March 12, 2013.

ORDER

IT IS HEREBY ORDERED THAT the May 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.¹⁵

Issued: March 18, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

¹⁵ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.