

FACTUAL HISTORY

This is the third appeal in this case.¹ On August 14, 2007 the Board affirmed a May 2, 2006 Office decision denying appellant's claim for a traumatic injury. On May 16, 2005 the Board affirmed a February 13, 2003 Office decision denying appellant's traumatic injury claim. The May 16, 2005 and August 14, 2007 decisions of the Board are hereby incorporated by reference.

On August 23, 2007 appellant requested reconsideration and submitted additional medical evidence. She noted that a July 29, 2003 magnetic resonance imaging (MRI) scan of her cervical spine revealed a herniated disc, prior to the date of the motor vehicle accident on February 25, 2004.² A July 11, 2000 MRI scan report, previously of record, revealed diffuse multilevel degenerative disc disease and moderately advanced degenerative cervical spondylosis with posterior disc bulging, impingement and neural foramen narrowing, particularly at C4-5 and C5-6. A July 29, 2003 MRI scan report revealed degenerative changes and a herniated disc at C4-5 and degenerative changes and disc bulging at C5-6 and C6-7.

A July 7, 2000 emergency room report indicated that appellant was seen for right arm and shoulder pain and numbness of two days duration. The medical history indicated that she was a letter carrier and her job involved "carrying heavy boxes [and] unbuckling seat belts." The emergency room physician provided findings on physical examination and diagnosed degenerative joint disease of the cervical spine and cervical radiculopathy.³ Appellant was prescribed pain medication and released to return to work on July 10, 2000. In a July 10, 2000 report, Dr. Hal M. Tobias, a Board-certified neurologist and psychiatrist, indicated that appellant went to the emergency room on July 7 and 8, 2000. He noted that, on July 6, 2000, she had a loaner work vehicle with a tight hand brake. Appellant had loosened the hand brake on her usual vehicle because the brake had to be pulled at every delivery stop. Dr. Tobias diagnosed cervical radiculopathy, rule out acute disc problem and scheduled an MRI scan. As noted, a July 11, 2000 MRI scan revealed multilevel degenerative disc disease and moderately advanced degenerative cervical spondylosis with posterior disc bulging, impingement and neural foramen narrowing, particularly at C4-5 and C5-6.

In an April 9, 2007 report, Dr. Tobias reiterated his opinion that appellant sustained an employment-related injury on July 7, 2000 when she drove a loaner work vehicle with a tight hand brake. He discussed various medical reports previously of record, including his own and

¹ See Docket No. 07-1020 (issued August 14, 2007), Docket No. 04-130 (issued May 16, 2005). On July 27, 2000 appellant, then a 38-year-old letter carrier, filed a claim for a traumatic injury alleging that on July 7, 2000 she experienced neck and right arm pain when she pulled the hand brake of her delivery truck. By decisions dated October 3 and November 15, 2000, August 23, 2001, March 5 and September 30, 2002, February 13, 2003 and May 2, 2006, the Office denied appellant's claim on the grounds that the evidence did not establish causal relationship between her neck and right arm injury and the July 7, 2000 work incident.

² The employing establishment previously suggested that appellant's February 25, 2004 motor vehicle accident could have caused her neck and arm symptoms in 2006.

³ Cervical radiculopathy is a disease of the cervical nerve roots, often manifesting as neck or shoulder pain. See DORLAND'S, *Illustrated Medical Dictionary* (30th ed. 2003) 1562.

contended that the medical evidence established a work-related cervical spine and right arm injury caused by using a tight hand brake on July 7, 2000.

By decision dated November 6, 2007, the Office affirmed the denial of appellant's traumatic injury claim on the grounds that the evidence did not establish that she sustained a work-related medical condition on July 7, 2000.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ has the burden to establish the essential elements of 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, that an injury 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. 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 medical evidence to establish that the employment incident caused a personal injury.⁷ An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident to establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that the claimant's condition became apparent during a period of employment

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Shirley A. Temple*, 48 ECAB 404 (1997).

⁸ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 7.

nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁹

In assessing medical evidence, the number of physicians supporting one position or another is not controlling; the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors that, comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁰

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a work-related injury to her neck and right arm on July 7, 2000.

A July 7, 2000 emergency room report indicated that appellant was seen for right arm and shoulder pain and numbness of two days duration. The medical history indicated that she was a letter carrier and her job involved "carrying heavy boxes [and] unbuckling seat belts." The emergency room physician provided findings on physical examination and diagnosed degenerative joint disease of the cervical spine and cervical radiculopathy. Appellant was prescribed pain medication and released to return to work on July 10, 2000. There was no rationalized opinion in the emergency room report as to the cause of the diagnosed conditions. In a July 10, 2000 report, Dr. Tobias indicated that appellant went to the emergency room on July 7 and 8, 2000. He noted that she had driven a loaner work vehicle with a tight hand brake. Dr. Tobias diagnosed cervical radiculopathy, rule out acute disc problem. He did not provide a rationalized opinion explaining how appellant's cervical condition was causally related to her employment. A July 11, 2000 MRI scan revealed multilevel degenerative disc disease and moderately advanced degenerative cervical spondylosis with posterior disc bulging, impingement and neural foramen narrowing, particularly at C4-5 and C5-6. The description of the degenerative cervical spine problems in the MRI scan report as "moderately advanced" is not consistent with the cause being an incident at work only a few days earlier, on July 7, 2000.

In an April 9, 2007 report, Dr. Tobias reiterated his opinion that appellant sustained an employment-related injury on July 7, 2000 after she drove a work vehicle with a tight hand brake. He discussed various medical reports previously of record and contended that the medical evidence established a work-related cervical spine and right arm injury caused by using a tight hand brake on July 7, 2000.

Causal relationship must be established by rationalized medical opinion evidence. Appellant has failed to submit such evidence. None of the contemporaneous medical reports that she submitted contain physical findings on examination and a rationalized medical opinion establishing that her right arm and shoulder pain and numbness on July 7, 2000 was causally related to using a tight hand brake on that date. Medical reports closer in time to the claimed

⁹ *Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Joan F. Burke*, 54 ECAB 406 (2003).

injury date are more probative than subsequent medical reports. In this case, neither the July 7, 2000 emergency room report nor the other contemporaneous medical reports contained a thorough factual and medical history and a rationalized medical opinion explaining how appellant's cervical and right arm conditions were caused by her employment. The Board finds that the weight of the medical evidence fails to establish that appellant sustained an employment-related injury on July 7, 2000.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury on July 7, 2000 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 6, 2007 is affirmed.

Issued: July 7, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board