

FACTUAL HISTORY

On May 10, 2007 appellant, a 46-year-old clerk, sustained a laceration over her left eye on that date when she hit her head on a trash can, which was located on a walkway outside of the employing establishment. The employing establishment controverted the claim, contending that appellant was not in the performance of duty when the incident occurred, and that she had not submitted medical evidence to support total disability.

Appellant submitted a May 10, 2007 report from St. Mary's Health Center, bearing an illegible signature, reflecting a diagnosis of "laceration, left eyebrow," which was treated with dermatoid strips. She submitted a May 14, 2007 work release form from Dr. Charles Nester, Board-certified in the field of family medicine, who stated that appellant was seen on that date and was unable to work from May 10 through 18, 2007.

In a letter dated June 1, 2007, the Office advised appellant that the evidence submitted was insufficient to establish that she had sustained a traumatic injury in the performance of duty. It solicited additional information, including medical evidence providing a diagnosis; a reasoned opinion on the causal relationship between the diagnosed condition and the May 10, 2007 incident; and objective evidence to support total disability during the claimed period. The Office also asked the employing establishment to provide information as to the ownership and control over the property on which the alleged incident occurred.

In response to the Office's request, appellant submitted a May 23, 2007 work excuse from Dr. Charles Nester, who stated that appellant was seen on that date, and was unable to work from May 19 through June 7, 2007.

By decision dated July 3, 2007, the Office denied appellant's claim, finding that the evidence failed to establish fact of injury.

In an undated response to the Office's request for information, the employing establishment stated that the May 10, 2007 incident occurred on federal property, which was under contract by the employing establishment for the exclusive use of its employees. The employing establishment provided a diagram of the area where the injury occurred, indicating that it was located 15 feet from appellant's work area.

In a statement dated June 28, 2007, appellant recounted the details of the May 10, 2007 incident. She indicated that she was outside the employing establishment lounge area when she hit her head on an orange metal object as she was attempting to throw away a piece of trash. When appellant tried to stand up, blood entered her eye and dripped on her shoe. She became faint and nauseous.

On July 23, 2007 appellant submitted a claim for compensation for the period May 10 through July 9, 2007. She submitted leave analysis sheets for the period April 27 through July 20, 2007.

The record contains reports from Dr. Stephen J. Nester, Board-certified in family medicine. In a June 7, 2007 duty status report, Dr. Nester stated that appellant had sustained blunt trauma to her head on May 10, 2007, resulting in diagnoses of a laceration to the left

eyebrow, with neck and shoulder pain. Appellant was not advised to resume work. In a June 7, 2007 work slip, Dr. Nester indicated that appellant was unable to work through July 10, 2007 “since recent medical illness.” In a June 7, 2007 progress note, he provided diagnoses of cervical strain, left eyebrow laceration and facial contusion. Dr. Nester indicated that appellant was experiencing headaches, as well as pain in her joints, muscles and chest. On July 23, 2007 he stated that appellant had sustained an eye injury on May 10, 2007 when she struck her head on a trash can at work. Dr. Nester indicated that appellant also strained her neck during the incident, “resulting in exacerbation of neck and right shoulder injuries (of February 27, 2004), requiring two months of recovery.”

Appellant submitted a June 28, 2007 report from Marian Gates, a physician’s assistant, who diagnosed chronic neck pain and anxiety. Ms. Gates opined that appellant’s May 10, 2007 head injury aggravated her preexisting neck and shoulder muscle strains and spasm, which led to anxiety.

On July 30, 2007 appellant requested reconsideration.² Her union representative contended that her injury occurred in the course of her regular employment, as she was on her lunch break on property leased by the employing establishment when the incident occurred. He also argued that the medical evidence established that her May 10, 2007 eye injury exacerbated her preexisting neck and shoulder injury, leading to her incapacitation.

By decision dated October 4, 2007, the Office modified its July 3, 2007 decision, in part. It accepted appellant’s traumatic injury claim for left eye laceration, but affirmed the denial of her claimed neck and shoulder conditions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act³ 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 the Act; that the claim was filed within the applicable time limitation of the Act; that an injury was sustained while in the performance of duty as alleged; and any disability or specific condition for which compensation is claimed, is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

Causal relationship is a medical issue and the medical issue generally required to establish causal relationship is rationalized medical opinion evidence.⁵ Rationalized medical opinion evidence is medical evidence, which includes a physician’s rationalized opinion on the

² The July 30, 2007 request for reconsideration was made by appellant’s union representative. The Board notes, however, that the record does not contain an authorization of representation, signed by appellant.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Calvin E. King*, 51 ECAB 394 (2000); *Caroline Thomas*, 51 ECAB 451 (2000).

⁵ *John J. Montoya*, 54 ECAB 306 (2003).

issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁶ The opinion of the physician must be based on a complete factual and medical background of the claimant,⁷ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

ANALYSIS

The Office accepted appellant's claim for a work injury that occurred on May 10, 2007 resulting in a left eyebrow laceration, but denied her claim as it related to her diagnosed shoulder and neck conditions. The Board finds that the medical evidence of record is insufficient to establish that these conditions are causally related to the accepted work injury.

Relevant medical evidence of record includes June 7, 2007 reports from Dr. Stephen Nester, who stated that appellant had sustained blunt trauma to her head on May 10, 2007, resulting in a laceration to the left eyebrow, and neck and shoulder pain. Dr. Nester provided diagnoses of cervical strain, left eyebrow laceration, and facial contusion, and indicated that appellant was experiencing headaches, as well as pain in her joints, muscles and chest. However, he did not provide findings on examination, or explain how appellant's neck and shoulder conditions could have resulted from the May 10, 2007 incident. As Dr. Nester's opinion was not fortified by medical rationale, it is of diminished probative value.⁹ On July 23, 2007 he stated that, in addition to sustaining an eye injury on the date in question, appellant also strained her neck, "resulting in exacerbation of neck and right shoulder injuries (of February 27, 2004), requiring two months of recovery." This report lacks probative value on several counts. First, it is inconsistent with appellant's factual account of the injury, which did not allege injury to the neck. There is no factual basis in the record supporting his statement that appellant strained her neck when she hit her head on the trash can. Moreover, Dr. Nester did not describe the nature of appellant's preexisting neck and shoulder conditions, or explain how the May 10, 2007 incident might have exacerbated these conditions. Therefore, his report is of diminished probative value.

Appellant submitted a June 28, 2007 report from Marian Gates, a physician's assistant, who diagnosed chronic neck pain and anxiety. Ms. Gates opined that appellant's May 10, 2007 head injury aggravated her preexisting neck and shoulder muscle strains and spasm, which led to anxiety. As physician's assistants are not physicians as defined by the Act, her opinion does not constitute probative medical evidence.¹⁰

⁶ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *Judy C. Rogers*, 54 ECAB 693 (2003).

⁹ The Board has consistently held that a medical opinion which is not fortified by medical rationale is of little probative value. See *Brenda L. DuBuque*, 55 ECAB 212 (2004); see also *David L. Scott*, 55 ECAB 330 (2004) and *Willa M. Frazier*, 55 ECAB 379 (2004).

¹⁰ Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

Appellant contended that her neck and shoulder conditions were causally related to the May 10, 2007 incident. However, an award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there was a causal relationship between her claimed condition and her employment.¹¹ Accordingly, the Office properly limited the accepted conditions to a left eye laceration.

CONCLUSION

The Board finds that appellant has not established that her claim should be accepted for additional medical conditions.

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹¹ *Patricia J. Glenn*, 53 ECAB 159 (2001).