United States Department of Labor
Employees' Compensation Appeals Board

D.P., Appellant	)	
and	)	**Docket No. 08-594**
	)	**Issued: June 6, 2008**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Seattle, WA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 18, 2007 appellant filed a timely appeal from the merit decisions of the Office of Workers' Compensation Programs dated May 9 and November 2, 2007 denying his claim for a traumatic injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on January 31, 2007, as alleged.

FACTUAL HISTORY

On February 1, 2007 appellant, then a 42-year-old health technician, filed a traumatic injury claim alleging that on January 31, 2007 she slipped and fell on a wet rubber mat in the washroom and sustained injuries to her back, neck, right arm and left hip and a slight concussion. She submitted a medical record from an emergency room visit on January 31, 2007. Dr. Christine C. Bittner, a Board-certified internist, indicated that appellant fell in a washroom at

the employing establishment. She also noted that appellant was in a motor vehicle accident several weeks earlier for which she was seeing a chiropractor. Dr. Bittner diagnosed "soft tissue injuries 2/2 to fall this am." Appellant also submitted a physician's initial report, dated February 1, 2007, from Dr. Steven T. Ryan, a chiropractor, who diagnosed lumbosacral radicular syndrome, lumbar sprain, sacral subluxation and pelvic subluxation. He checked a box indicating that the injury was caused by appellant's work incident.

By letter dated April 6, 2007, the Office advised appellant that her chiropractor was not considered a physician under the Federal Employees' Compensation Act because he had not diagnosed a subluxation by use of an x-ray. It informed appellant of the additional medical information that was necessary for her to establish her claim. In response, she submitted chiropractic notes dated from January 22 to March 26, 2007. In the January 26, 2007 note, written before the January 31, 2007 injury, Dr. Ryan noted that appellant had "improved cervical complaint middorsal myalgia." On April 20, 2007 he indicated that no x-rays were obtained.

By decision dated May 9, 2007, the Office denied appellant's claim.

By letter dated May 13, 2007, appellant's attorney requested an oral hearing. At the September 19, 2007 hearing, appellant's counsel asked that the record be kept open for an additional 30 days for the submission of further medical evidence. No additional evidence was received by the Office within the 30-day period.

By decision dated November 2, 2007, the hearing representative affirmed the May 9, 2007 denial of benefits.

LEGAL PRECEDENT

An employee seeking benefits under the Act[1] has the burden of establishing the essential elements of her claim. When the employee claims injury in the performance of duty, she must submit sufficient evidence to establish that she sustained a specific incident at the time, place and in the manner alleged and that such incident caused an injury.[2] The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship.[3]

To establish a causal relationship between an employee's condition and an alleged employment injury, appellant must submit rationalized medical opinion from a physician based on a complete and accurate medical and factual background.[4] The physician's opinion must be expressed in terms of reasonable medical certainty and must be supported by medical rationale

[1] 5 U.S.C. §§ 8101-8193.

[2] *See John W. Montoya*, 54 ECAB 308 (2003).

[3] *See Louis T. Blair*, 54 ECAB 348 (2003).

[4] *See Kathryn E. Demarsh*, 56 ECAB 677 (2005).

explaining the nature of the relationship between the diagnosed condition and the claimant's employment factors.[5]

ANALYSIS

Appellant alleged that she sustained injuries to her back, neck, right arm and left hip when she slipped on a wet rubber mat in the washroom while working at the employing establishment. The Office accepted that the employment incident occurred as alleged. The issue on appeal, therefore, is whether appellant submitted sufficient medical evidence to establish that she sustained an injury as a result of this accepted incident.

Appellant has failed to submit sufficient medical evidence that establishes that she sustained an injury as a result of the accepted employment incident. She did seek medical attention at the emergency room on January 31, 2007, the date of the alleged incident. Dr. Bittner, the attending physician at the emergency room, assessed appellant with soft tissue injuries due to the fall. The vague reference to "soft tissue injuries" without more by way of medical rationale is insufficient to establish a compensable diagnosis.

Appellant also sought treatment from Dr. Ryan, a chiropractor. Section 8101(2) of the Act provides that chiropractors are considered physicians only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation to correct a subluxation as demonstrated by x-ray to exist.[6] While Dr. Ryan diagnosed sacral subluxation and pelvic subluxation, he specifically indicated that no x-rays were taken. In the absence of a diagnosis of subluxation based on x-rays, he is not a "physician" under the Act.[7] Since Dr. Ryan is not a physician, his reports are of no probative medical value to the claim.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor her belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.[8] As appellant failed to submit such evidence, the Office properly denied her claim.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury on January 31, 2007, as alleged.

[5] *See Charles W. Downey*, 54 ECAB 421 (2003).

[6] 5 U.S.C. § 8101(2).

[7] *See Michelle Salazar*, 54 ECAB 523 (2003).

[8] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 2 and May 9, 2007 are affirmed.

Issued: June 6, 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