

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

C.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Des Allemands, LA, Employer)

Docket No. 09-465
Issued: August 25, 2009

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 26, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 4, 2007 and September 25, 2008 merit decisions denying her traumatic injury claim. Pursuant to 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 sustained a traumatic injury while in the performance of duty on November 20, 2006.

FACTUAL HISTORY

On October 8, 2007 appellant, a 57-year-old part-time flex (PTF) clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 20, 2006, she sustained an injury to her right knee when she tripped and fell. The employing establishment controverted the claim, noting that she did not report the alleged incident for more than 30 days.

Appellant submitted November 7, 2006 treatment notes from Dr. Christopher Cenac, Sr., a Board-certified orthopedic surgeon, who diagnosed right knee pain and arthrosis of the right knee. In January 26, 2007 notes, Dianne G. Garardi, a physical therapist, stated that on December 4, 2006 appellant reported increased right knee pain which started after she “stepped down wrong off a step” two weeks earlier. On December 19, 2006 appellant told her that appellant had sustained an abrasion to her right knee when she fell at work on December 15, 2006. In a December 16, 2006 return-to-work certificate, Dr. Kyle Guidy, a treating physician, diagnosed syncope and indicated that appellant could return to full duty.

On November 1, 2007 the Office notified appellant that the evidence submitted was insufficient to establish her claim and advised her to provide, within 30 days, additional documentation, including a firm diagnosis and a physician’s opinion as to how her injury resulted in the diagnosed condition. It asked appellant to provide a detailed description as to how the injury occurred, including the cause of the injury, statements from any witnesses or other documentation supporting her claim and the reason she delayed seeking medical treatment. Appellant did not respond.

In a December 4, 2007 decision, the Office denied appellant’s claim. It found that the evidence was insufficient to establish that the claimed incident occurred as alleged, or that appellant had a diagnosed condition which could be connected to the claimed event.

On January 2, 2008 appellant requested an oral hearing, which was held on July 23, 2008. She stated that on the date of the alleged incident, she had just returned to work following nonwork-related arthroscopic surgery on her right knee. Appellant testified that on November 20, 2006, she “made a misstep right on [the] edge” of a concrete slab in front of a mailbox.¹ She allegedly fell to the ground and struck her right knee. When appellant reported the incident to her postmaster, Sharon Smith, she was advised that “it would [not] look good” if she reported an accident after having just returned to work. She further testified that she reported to work the day following the incident, but had difficulty working due to pain. Appellant sought medical treatment with Dr. Cenac two days after the incident. On February 21, 2007 Dr. Cenac performed total knee replacement surgery.

The record contains an August 23, 2006 operative report, reflecting that appellant underwent arthroscopy, debridement of the medial compartment and medial meniscectomy of the right knee on that date. She submitted notes from Ms. Girardi, a physical therapist, for the period October 9, 2006 through January 8, 2007. Appellant’s history revealed an injury to her right knee in 2002 with increasing pain over the next four years, such that she underwent right knee arthroscopic surgery. She continued to experience right knee pain, which was exacerbated by her duties as a mail clerk. On January 8, 2007 appellant stated that she fell at work on December 15, 2006 and hit her right knee. The record contains a June 14, 2006 report of a magnetic resonance imaging (MRI) scan of the right knee, which reflected a torn medial meniscus and focal arthritic disease.

The record contains hospital admission forms, diagnostic test results, physicians’ notes and reports of MRI scans for the period January 11 through February 26, 2007. On January 19,

¹ The record contains photos of two mailboxes, which are atop a concrete slab adjacent to a sidewalk.

2007 Dr. Sandeep A. Patel, a Board-certified internist, specializing in cardiovascular diseases, stated that appellant was cleared for right knee surgery, which was scheduled for January 21, 2007. On February 21, 2007 Dr. Cenac stated that appellant's January 11, 2007 MRI scan showed advanced degenerative changes in the medial compartment of the right knee. He advised that appellant was scheduled for total knee replacement surgery. On February 21, 2007 Dr. Cenac performed a total right knee replacement, with a preoperative diagnosis of right knee arthrosis. In a February 22, 2007 report, Dr. Steven Youngblood diagnosed hypertension, anticoagulation, dyslipidemia, restless leg syndrome, fibromyalgia and hyperglycemia.² In a September 25, 2008 decision, an Office hearing representative affirmed the denial of appellant's claim.

LEGAL PRECEDENT

The Federal Employees' Compensation Act³ provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.⁴ The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."⁵

An employee seeking benefits under the Act has the burden of proof to establish 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.⁷

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and

² The Board notes that the record contains an undated occupational disease claim (Form CA-2), received by the Office on August 12, 2008, wherein appellant alleges that she sustained injuries to her left knee due to employment activities. Appellant's occupational disease claim is not before the Board on this appeal.

³ 5 U.S.C. §§ 8101 *et seq.*

⁴ 5 U.S.C. § 8102 (a).

⁵ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

⁶ *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *See Paul Foster*, 56 ECAB 208 (2004). *Betty J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q), (*ee*).

circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁸

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.⁹ 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.¹⁰

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.¹¹

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a traumatic injury to her right knee on November 20, 2006. Appellant's presentation of the facts is not supported by the evidence of record and does not establish her allegation that a specific incident occurred which caused an injury on the date in question.¹² Moreover, there are inconsistencies in the evidence which cast serious doubt on the validity of her claim.

Appellant initially reported on her October 8, 2007 CA-1 form that she injured her right knee when she tripped and fell. She provided no detailed account of the incident, as required in a traumatic injury claim. Appellant subsequently stated that on November 20, 2006, she "made a misstep right on [the] edge" of a concrete slab in front of a mailbox, fell to the ground and struck her right knee. However, she failed to adequately explain the circumstances of the injury or why she had delayed for approximately 11 months before reporting it to her employer.

⁸ See *Betty J. Smith*, *supra* note 7.

⁹ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).

¹² See *Dennis M. Mascarenas*, *supra* note 10.

Appellant's subsequent course of action also fails to support her claim. She did not seek medical treatment for two days following the alleged incident. Moreover, appellant delayed nearly 11 months in filing her traumatic injury claim. She claims to have immediately informed her postmaster of the incident. However, the employing establishment denied appellant's contention and controverted the claim. Although appellant alleged that the incident was witnessed by a patron, she did not provide any statements to corroborate her claim from anyone who either witnessed, or to whom she immediately reported the incident.

Appellant's claim is further undermined by inconsistencies in the evidence. In her CA-1 form, she alleged that she injured her right knee when she tripped and fell on November 20, 2006. However, on December 19, 2006 and January 8, 2007, appellant informed her physical therapist that she sustained an abrasion to her right knee when she fell at work on December 15, 2006.

The medical evidence of record casts further doubt as to the validity of appellant's claim. The record reflects that she sustained an injury to her right knee in 2002 and that she underwent arthroscopy, debridement of the medial compartment and medial meniscectomy of the right knee on August 23, 2006, three months prior to the alleged work incident. Appellant had just returned to work following nonwork-related arthroscopic surgery on her right knee when she allegedly fell on her right knee on November 20, 2006. On February 21, 2007 Dr. Cenac diagnosed right knee arthrosis. He stated that appellant's January 11, 2007 MRI scan showed advanced degenerative changes in the medial compartment of the right knee and recommended a total right knee replacement. While the evidence reveals a long history of treatment for appellant's right knee condition, there is no medical evidence of record which recorded a history of her November 20, 2006 right knee incident while at work. The record does not contain a medical report from any physician, as defined by the Act, which contains any reference to the alleged November 20, 2006 incident.¹³

Appellant has failed to establish the fact of injury, she did not submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged or that the alleged incident caused her right knee condition. Therefore, the Board finds that she has not met her burden of proof to establish that she sustained an injury in the performance of duty on November 20, 2006.¹⁴

On appeal, appellant's representative contends that the Office's September 25, 2008 decision was contrary to the fact and law. For reasons stated above, the Board finds the representative's argument to be without merit.

¹³ Physical therapists do not qualify as "physicians" under the Act. 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."

¹⁴ As appellant failed to establish that the claimed event occurred as alleged, it is not necessary to discuss the probative value of medical evidence. *Id.*

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained a traumatic injury to her right knee in the performance of duty on November 20, 2006.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2008 and December 4, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 25, 2009
Washington, DC

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

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

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