United States Department of Labor
Employees' Compensation Appeals Board

N.W., Appellant	)	
and	)	**Docket No. 10-1198**
	)	**Issued: April 13, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Los Altos, CA, Employer	)	

Appearances:
Gerald A. Heimbecker, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 23, 2010 appellant, through her representative, filed a timely appeal of a September 25, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that her left distal femur fracture was causally related to a January 26, 2009 incident at work.

FACTUAL HISTORY

On January 29, 2009 appellant, then a 67-year-old letter carrier, submitted a claim for traumatic injury alleging that on January 26, 2009 she sustained a dislocated left knee, broken femur and broken tibia when she slipped and fell on the sidewalk while in the performance of

[1] 5 U.S.C. § 8101 *et seq.*

duty. She was moving garbage cans out of her way in order to deliver mail when she fell. Appellant stopped work on January 26, 2009 and returned on April 30, 2009.[2] The employing establishment controverted her claim as there was insufficient medical evidence.

On February 2, 2009 the employing establishment authorized continuation of pay for January 27 to March 12, 2009.

On February 6, 2009 the Office advised appellant that the evidence was insufficient to establish her claim. It accepted that the January 26, 2009 incident occurred as alleged, but found that the record lacked any medical evidence to establish fact of injury. There was no medical evidence providing a diagnosis of any condition resulting from the claimed slip and fall or a physician's opinion on how appellant's claimed left leg conditions resulted from the January 26, 2009 incident. The Office requested a narrative medical report which provided a history of injury, a firm diagnosis, test results, treatment provided and a physician's opinion explaining how her left leg injury was caused or aggravated by the January 26, 2009 slip and fall incident.

On February 25, 2009 the Office received a visit verification slip from Kaiser Permanente dated January 30, 2009. Nancy Chu-Chun, a physician's assistant, stated that appellant was seen in that office and would be unable to return to work from January 26 to April 30, 2009.

In a February 20, 2009 letter, the employing establishment noted that it had authorized continuation of pay from January 27 to March 12, 2009, but the January 30, 2009 medical slip was signed by a physician's assistant and not by a physician.

On March 13, 2009 appellant submitted a Form CA-7 requesting compensation for leave without pay from March 13 to April 30, 2009. She noted that she was injured on January 26, 2009 and received continuation of pay to March 13, 2009.

In a March 18, 2009 decision, the Office denied appellant's claim for compensation. It found that the January 26, 2009 slip and fall incident occurred but that the only medical evidence submitted was not signed by a physician. There were visit verification slips from Kaiser Permanente, which noted only that appellant was unable to work until April 30, 2009.

On March 26, 2009 appellant requested an oral hearing before the Branch of Hearings and Review. On July 13, 2009 an oral hearing was held at which appellant was represented through her union. The Office hearing representative advised appellant that her claim was unsupported by sufficient medical evidence. He requested a medical report which included a history of injury and prior injuries, a medical diagnosis, findings from examinations and a physician's opinion on causal relation. The hearing representative noted that evidence submitted did not provide a specific history of injury other than appellant fell.

Appellant submitted a January 30, 2009 note signed by Nancy Lan, a physician's assistant, a disclosure of medical records form from Kaiser Permanente dated February 5, 2009 and x-rays dated May 12, 2009.

[2] Line 27 on appellant's Form CA-1 does not state when appellant returned to work, but other documents in the record indicate that she returned to work on April 30, 2009.

In a June 25, 2009 report, Dr. Carter W. Chang noted that appellant was his patient. He stated that she had been seen at the Kaiser Santa Clara emergency room on January 26, 2009 due to knee pain after a fall. X-rays diagnosed a left comminuted distal femur fracture and appellant was taken to surgery for an open reduction and internal fixation (ORIF). Appellant was discharged on January 30, 2009 to a nursing facility for physical therapy. Dr. Chang addressed her subsequent treatment.

A July 9, 2009 report from Dr. Jeffrey A. Mann, a Board-certified orthopedic surgeon, provided a history of prior treatment on December 21, 2008 when appellant's left knee locked up while a home causing her to fall and sustain a right tibial plateau fracture. He related that appellant had a prior left leg injury on July 23, 2003 which led to two knee surgeries. On December 21, 2008, while at home, appellant fell while getting into a bathtub. Dr. Mann advised that the injury was caused by her preexisting left knee condition, which caused it to lock up.

A January 30, 2009 order sheet provided a diagnosis of left distal femur ORIF fracture and recommended physical therapy treatments.

In an August 5, 2009 letter, counsel forwarded an August 4, 2009 note from Dr. Chang, who stated that appellant "sustained a left distal femur fracture while on her job delivering mail on January 26, 2009."

In a September 25, 2009 decision, an Office hearing representative affirmed the denial of appellant's claim. He noted that the medical record established a left distal femur fracture but there was insufficient medical opinion from a physician addressing causal relation. The notes from Dr. Chang failed to provide a complete history of injury or explanation of how the accepted slip and fall caused appellant's left leg fracture.

LEGAL PRECEDENT

An employee seeking benefits under the Act[3] has the burden of proof to establish the essential elements of her claim by the weight of the reliable, probative, and substantial evidence[4] including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.[5]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[6] The second

[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

[6] *See Robert A. Gregory*, 40 ECAB 478 (1989).

component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[7] The Office's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection, was witnessed or reported promptly and no dispute exists as to fact of injury, and no time lost from work is claimed.[8] In clear-cut traumatic injury claims where fact of injury is established and competent to cause the condition described, such as a fall from a scaffold resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed.[9] In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[10]

To be rationalized, medical evidence should include a physician's opinion on the issue of causal relationship between the claimed condition and the implicated employment factor. 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 rationale explaining the nature of the relationship between the condition diagnosed and the employment factor identified by the claimant.[11]

ANALYSIS

The Office accepted that on January 26, 2009 appellant slipped and fell while she was delivering mail. It found that she did not submit sufficient medical evidence to establish that her left comminuted distal femur fracture was caused by the incident at work. The Office denied appellant's claim on the grounds that medical evidence submitted failed to provide a rationalized opinion on causal relationship. The Board finds that she has not submitted sufficient medical evidence to establish her claim.

Appellant did not submit contemporaneous medical records related to her hospitalization or treatment commencing January 26, 2009, other than an order sheet of January 30, 2009 pertaining to her transfer to a skilled nursing facility. The evidence of record does not contain her admission documentation, the reports of any contemporaneous diagnostic studies, any surgical records or reports of any attending surgeon.

The medical evidence consists of brief treatment notes by Dr. Chang dated June 25 and August 4, 2009. Dr. Chang noted that appellant was treated at the emergency room on January 26, 2009 for "complaint of knee pain after a fall." He made general reference to diagnostic x-rays obtained upon admission, but any contemporaneous studies were not submitted to the Office. There are x-ray studies of record dated May 12, 2009, but these were not

[7] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3d(1) (June 1995).

[9] *Id*. at Chapter 2.805.3d(2)

[10] *Id*. at Chapter 2.805.3d(3).

[11] *See A.D.*, 58 ECAB 149 (2006); *Paul Foster*, 56 ECAB 208 (2004).

addressed by any physician.[12] The August 4, 2009 report of Dr. Chang noted only that appellant sustained a left distal fracture "while on her job delivering mail" on January 26, 2009. Dr. Chang did not provide an accurate history of the incident accepted by the Office, *i.e.*, that appellant slipped and fell that day while moving garbage cans. The opinion rendered by Dr. Chang lacks an accurate history of injury or complete history of medical treatment to her left leg. He did not address the report of Dr. Mann, which made general reference to a preexisting history of injury on July 23, 2003 that necessitated two prior knee surgeries. Lacking any contemporary hospital records of treatment as of January 26, 2009, the history provided by Dr. Chang cannot be accurately verified.[13]

The Board notes that an injury may be accepted without a medical report where the condition was minor, reported promptly and there is no time lost due to disability. Although counsel filed a claim on appellant's behalf as of January 29, 2009, the nature of the facture claimed by her is not a minor injury. Moreover, appellant has claimed lost time from work, disability, due to a left leg fracture.[14] Therefore, this provision is not applicable to the facts of the case.[15]

CONCLUSION

The Board finds that appellant did not established that she sustained a left distal femur fracture on January 26, 2009, as alleged.

[12] The Board has held that the delay in diagnostic testing may diminish the probative value of a medical opinion offered. *See Linda L. Mendenhall*, 41 ECAB 532 (1990).

[13] This decision does not preclude appellant from submitted additional evidence to the Office with a request for reconsideration.

[14] The treatment records from a Kaiser physician's assistant are of no probative medical value as she is not a physician as defined under the Act. *See George H. Clark*, 56 ECAB 162 (2004).

[15] *Jennifer Atkerson*, 55 ECAB 317 (2004); *Deborah L. Beatty*, 54 ECAB 340 (2003). *See E.B.*, Docket No. 10-1045 (issued December 3, 2010). As fact of injury is contested, this is not a situation of a clear-cut traumatic injury. *See* FECA Procedure Manual, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2009 decision of the Office of Workers' Compensation Program is affirmed.

Issued: April 13, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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