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TAMMY HARRELL, Appellant	)	
	)	
and	)	Docket No. 04-628
	)	Issued: June 21, 2004
DEPARTMENT OF TRANSPORTATION,	)	
KALAMAZOO AIRPORT, Kalamazoo, MI,	)	
Employer	)	
	)	

Case Submitted on the Record

Before:
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

On January 5, 2004 appellant filed a timely appeal of an Office of Workers' Compensation Programs' merit decision dated November 28, 2003, which denied modification of decisions, which found that she failed to establish an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has established that she sustained an injury while in the performance of duty.

On January 21, 2003 appellant, then a 38-year-old transportation security screener, filed a traumatic injury claim alleging that on December 24, 2002 she sustained a torn tendon with

tendinitis in her right ankle. She stated that she experienced severe pain in her ankle from walking with “weight and steps.”¹

On April 20, 2003 appellant filed a claim for compensation (Form CA-7). On the claim form an employing establishment screening supervisor stated that appellant missed no time from work and had no periods of pay cessation since the alleged December 24, 2002 injury.

By letter dated May 6, 2003, the Office advised appellant that her claim was initially accepted for limited medical expenses because there was no indication that her injury was other than minor in nature. The Office noted that her claim had been reopened for formal review when she submitted a Form CA-7 for wage-loss compensation on April 20, 2003. The Office informed appellant that she failed to identify any period of wage loss or indicate why she was seeking compensation. The Office noted the employing establishment’s response that appellant did not miss any time from work or have any cessation of pay due to the alleged December 24, 2002 injury. The Office advised her that the evidence of record was insufficient to support her claim because no diagnosis of any condition resulting from the alleged December 24, 2002 injury had been provided and there was no evidence establishing how she was injured while performing her employment. The Office advised appellant about the type of factual and medical evidence she needed to submit to establish her claim.

In response, appellant noted that she did not lose any time from work and her claim was for medical expenses only. In describing the alleged December 24, 2002 injury, she stated that she was walking up over baggage scales carrying large bags when she stepped off and landed wrong while carrying extra weight.² She submitted treatment notes dated January 1, 2003 of Dr. David J. Schriemer, a Board-certified family practitioner, regarding the medical treatment of her foot and ankle conditions. A January 21, 2003 duty status report indicated that appellant had posterior tibial tendinitis and listed her physical restrictions. A March 25, 2003 medical report of Dr. Sean Bak, an orthopedic surgeon, revealed appellant’s complaints of bilateral knee and heel pain, her medical and personal background and his findings on physical examination. He diagnosed bilateral patellofemoral syndrome and bilateral plantar fasciitis. Dr. Bak discussed the chronic nature of appellant’s condition and the possibility of arthroscopic knee surgery. The May 27, 2003 treatment notes of Dr. Nelson indicated that appellant’s knees were doing fairly well and that her heels bothered her. He provided his findings on physical examination and her proposed medical treatment.

The Office received a February 19, 2003 duty status report of Dr. Rick W. Tiller, a podiatrist, which provided a diagnosis of plantar fasciitis and appellant’s work restrictions. In an attending physician’s report of the same date, he reiterated that she had plantar fasciitis and indicated with an affirmative mark that her condition was caused by the alleged December 2002

¹ The record reveals that appellant was separated from the employing establishment effective June 6, 2003 due to downsizing.

² In a telephone conversation on June 3, 2003, appellant advised the Office that initially she was not seeking wage-loss compensation until Dr. Terry L. Nelson, her attending Board-certified surgeon, recommended that she stay off work so that her right ankle could heal. She provided a description of how she injured her right ankle. Dr. Nelson’s finding that appellant had injured her right tendon and her statement that she had bilateral heel problems due to working over a period of time.

injury. Dr. Tiller's February 26 and March 11, 2003 treatment notes listed appellant's work restrictions. Dr. Schriemer's February 10, 2003 attending physician's report noted a diagnosis of posterior tibial tendinitis and he indicated with an affirmative mark that appellant's condition was caused by an employment activity. The June 4, 2003 treatment notes of appellant's physical therapist, Carl Fried, noted that she had bilateral plantar fasciitis and her treatment plan.

By decision dated June 16, 2003, the Office found the medical evidence of record insufficient to establish that appellant's foot condition was caused by the December 24, 2002 employment incident.³ Subsequent to its decision, the Office received the June 2, 2003 report of Janis Montei, appellant's physical therapist and Mr. Fried's June 10, 2003 report regarding her lower extremity strengthening treatment. The Office also received a June 2, 2003 disability certificate from Dr. Nelson indicating that appellant could not return to work effective June 9, 2003, until further notice.

In a July 20, 2003 letter, appellant requested reconsideration, stating that she wished to be reimbursed for medical expenses that she paid in the amount of \$983.30. She related that an Office claims examiner advised her that her case had been closed and was approved for medical expenses to \$1,500.00. Appellant reported that she used all of her annual and sick leave to rest her ankle. She indicated that she was back at work and wished to continue physical therapy and to have her sick and annual leave reinstated. Appellant submitted Dr. Nelson's July 3, 2003 medical report, which found chondromalacia patella of both knees and plantar fasciitis. Physical therapy was prescribed for the treatment of her conditions.

In letters dated August 12 and September 3, 2003, appellant again requested that the Office reimburse her medical expenses. The Office received treatment notes from a registered nurse whose signature is illegible.

In an October 9, 2003 decision, the Office denied modification of the June 16, 2003 decision. The Office found the medical evidence of record insufficient to establish that appellant's right ankle condition was caused by the December 24, 2002 employment incident.

The Office subsequently received an October 16, 2003 letter from Dr. Regina L. Spears, a podiatrist, who noted a history of a right ankle injury sustained by appellant and her complaints of pain in her heels. She provided findings on physical and x-ray examination and diagnosed bilateral plantar fasciitis with heel spur syndrome and an old fracture of the left ankle. Dr. Spears opined that there was a possibility that appellant developed plantar fasciitis secondary to walking differently to accommodate an old injury. The Office also received Dr. Nelson's July 2, 2003 disability certificate releasing appellant to return to work on July 3, 2003 with no restrictions. On November 6, 2003 appellant requested reconsideration.

³ The Office advised appellant that there was a possibility she sustained an occupational illness since her description of the injury provided that she engaged in extensive walking and repeated lifting, which suggested that her condition occurred over a period of time. The Office recommended that she file an occupational disease claim through the employing establishment if this were the case. The Office explained that since there was no work stoppage, but there was a possibility of future work stoppage, a Form CA-7 should be submitted under the new occupational illness claim after the claim was fully developed and a decision was rendered.

By decision dated November 28, 2003, the Office denied modification of its prior decisions, finding that the medical evidence of record was insufficient to establish that she sustained an injury on December 24, 2002.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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 applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁶

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 or exposure, which is alleged to have occurred.⁷ In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁹ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹⁰

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 5.

⁷ *See also*, Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁸ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

⁹ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Charles E. Evans*, 48 ECAB 692 (1997).

ANALYSIS

In this case, it is undisputed that appellant experienced a misstep off baggage scales while carrying extra weight on December 24, 2002. Thus, the Board finds that she satisfied the first criteria. The Board, however, finds the medical evidence of record insufficient to establish that this incident caused an injury.

In support of her claim, appellant submitted the medical treatment notes of Drs. Schriemer, Nelson and Tiller regarding the treatment of her foot and ankle and her work restrictions. These notes failed to address a causal relationship between the diagnosed conditions and the December 24, 2002 employment incident. Dr. Schriemer's January 21, 2003 duty status report noted treating appellant for posterior tibial tendinitis, Dr. Bak's March 25, 2003 report indicated that she had bilateral patellofemoral syndrome and bilateral plantar fasciitis, Dr. Tiller's February 19, 2003 duty status report providing a diagnosis of plantar fasciitis and Dr. Nelson's July 3, 2003 report found chondromalacia patella on both knees and plantar fasciitis. The physicians, however, failed to discuss whether her conditions were caused by the December 24, 2002 employment incident.

In a February 10, 2003 attending physician's report, Dr. Schriemer noted that appellant had posterior tibial tendinitis and indicated with an affirmative mark that her condition was caused by the December 2002 employment incident. In a February 19, 2003 attending physician's report, Dr. Tiller diagnosed plantar fasciitis and also indicated with an affirmative mark that appellant's condition was caused by the December 2002 employment incident. Form reports indicating with an affirmative mark that a condition was caused or aggravated by employment activities are insufficient to discharge a claimant's burden of proof because such forms lack the necessary medical discussion explaining the basis of the physician's opinion.¹¹ Dr. Schriemer and Dr. Tiller did not provide any medical rationale explaining how or why appellant's foot conditions were caused by the December 24, 2002 employment incident and are insufficient to establish her claim.

The treatment notes and report of appellant's physical therapists, Mr. Fried and Ms. Montei and the registered nurse whose signature is illegible, are of no probative value. Neither a physical therapist, nor a nurse is defined as a "physician" under the Act and, therefore, is not competent to give a medical opinion.¹²

Dr. Nelson's June 2, 2003 disability certificate indicated that appellant could not return to work effective June 9, 2003 until further notice. A July 2, 2003 disability certificate indicated that she was released to return to work on July 3, 2003 with no restrictions. Dr. Nelson's disability certificates are insufficient to establish appellant's claim because the physician failed

¹¹ *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).

¹² 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983); *Sheila A. Johnson*, 46 ECAB 323 (1994).

to indicate a diagnosis or discuss how appellant's condition was caused by the December 24, 2002 employment incident.¹³

The October 16, 2003 letter from Dr. Spears noted that appellant had bilateral plantar fasciitis with heel spur syndrome and an old fracture of the left ankle. Her opinion that there was a possibility that appellant developed plantar fasciitis secondary to walking differently to accommodate an old injury does not establish that her condition was caused by the December 24, 2002 injury as she attributed appellant's right foot condition to an old left ankle injury.

Based on the foregoing, appellant has failed to submit sufficient rationalized medical evidence to establish that she sustained an injury caused by the December 24, 2002 employment incident.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the November 28, October 9 and June 16, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 21, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹³ *Daniel Deparini*, 44 ECAB 657, 659 (1993).