

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

D.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Detroit, MI, Employer**

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**Docket No. 06-1606
Issued: November 30, 2006**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 6, 2006 appellant filed a timely appeal from the October 13, 2005 merit decision of the Office of Workers' Compensation Programs, which denied her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of her case. The Board also has jurisdiction to review the Office's May 30, 2006 nonmerit decision denying her request for reconsideration.

ISSUES

The issues are: (1) whether appellant sustained a left ankle injury on May 10, 2005 while in the performance of duty; and (2) whether the Office properly denied her April 7, 2006 request for reconsideration.

FACTUAL HISTORY

On May 10, 2005 appellant, then a 30-year-old city letter carrier, filed a claim alleging that she injured her left ankle that day while in the performance of duty: "Twisted ankle while delivering mail." Her supervisor noted: "Ankle sprain -- left, walking -- weight of body."

Appellant saw a physician's assistant that same day. He reported the following history of injury: "Patient states: 'I was walking delivering mail and I twisted my left ankle.' No fall or direct impact." He noted that appellant had an inversion twist of her left ankle. On May 17, 2005 appellant saw Dr. Stephen D. Daly, an osteopath, who diagnosed ankle strain, improving and released her to return to work that day with restrictions. On May 24, 2005 appellant followed up with Dr. Donald Speyer, another osteopath, who diagnosed ankle sprain and released her from care to return to the clinic as needed. The Office received a number of reports from the physician's assistant and from physical therapists.

On September 12, 2005 the Office informed appellant that this evidence was insufficient to support her claim because her treating physician needed to provide an opinion, with medical rationale, relating her left ankle sprain to her federal job duties. The Office asked appellant to submit a detailed statement as to how she sprained her ankle: "You state that you were delivering mail yet you did n[o]t provide details (*i.e.*, was the sidewalk uneven, was there something you tripped over, etc)." The Office also asked her to submit a detailed narrative report from her physician explaining why he believed the incident at work caused or aggravated the diagnosed condition. The Office emphasized: "This evidence is crucial in consideration of your claim. You may wish to discuss the contents of this item with your physician."

In a decision dated October 13, 2005, the Office denied appellant's claim for compensation on the grounds that the medical evidence did not demonstrate that the claimed medical condition was related to the "established work-related event(s)." The Office noted that appellant did not provide the requested statement describing how she sprained her ankle.

On April 7, 2006 appellant requested reconsideration. She offered her account of what happened on May 10, 2005:

"This is what happened.

"I was walking delivering my mail. It wasn't like a trip or fall. I experienced a shift of weight and my left ankle just rolled under. This twisted my foot and produced a sprain of the ankle. This was about 10:30 to 11:00 a.m. to the best of my recall. It was at 16570 Bramell, a street in Detroit's Old Redford Station, Detroit, MI 48219.

"I was just sitting on the porch at the address. My customer and a neighbor assisted me to get in their vehicle and drove me back to the mail truck. There I waited for management to come out from the station. They then took me back to the station. I filled out some paperwork and went to the Concentra Clinic.

"At Concentra they X-rayed my ankle, treated the swelling with 'bio-freeze,' wrapped it with a heating pad, gave me Motrin, and scheduled me for a revisit the next morning.

"I have no other employment aside from being a letter carrier. I do not participate in any strenuous sports or hobbies."

Appellant submitted additional reports from physical therapists.

In a decision dated May 30, 2006, the Office denied appellant's request for reconsideration. The Office acknowledged that appellant provided a detailed statement on how she was injured on May 10, 2005 but found this irrelevant to the reason her claim was denied. The Office stated that her claim was denied because her physician did not explain the medical connection between the incident of May 10, 2005 and her medical condition. The Office further stated that this could be addressed only by a physician, so physical therapy notes were irrelevant.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.²

Causal relationship is a medical issue³ 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 of the physician must be based on a complete factual and medical background of the claimant,⁴ must be one of reasonable medical certainty⁵ 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.⁶

ANALYSIS -- ISSUE 1

The Office noted in its October 13, 2005 decision that "work-related event(s)" were established but did not specify what those events were. Appellant alleged on her claim form that she twisted her ankle while delivering mail as a city carrier. And the contemporaneous evidence tells a consistent story: she was walking her route on May 10, 2005 when her left ankle simply inverted under the weight of her body. The incident involved no fall or direct impact. Although the Office asked appellant to submit a detailed statement describing exactly what happened, there is enough evidence in the record to establish that the incident occurred as alleged. An

¹ 5 U.S.C. §§ 8101-8193.

² See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁶ See *William E. Enright*, 31 ECAB 426, 430 (1980).

employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁷ The Board therefore finds that appellant has met her burden to establish that she experienced a specific event or incident occurring at the time, place and in the manner alleged. The question that remains is whether this incident caused an injury.

The Office correctly found that no physician has actually stated that appellant sustained an injury in the performance of duty on May 10, 2005. A physician's assistant is not a "physician" within the meaning of the Act and is not competent to give a medical opinion.⁸ A physical therapist is also not a "physician."⁹ Any opinion given by a physical therapist cannot discharge appellant's burden of proof.

The only medical reports in the record are from Dr. Daly and Dr. Speyer, both osteopaths. These physicians provided no detailed account of what occurred on May 10, 2005. The opinions did not state whether this incident caused a left ankle sprain or strain. The physicians must affirmatively support appellant's claim for benefits. There must be an opinion on whether appellant injured her left ankle while delivering mail on May 10, 2005 and provide a sound reason to support their belief. This kind of medical opinion evidence is necessary to establish the critical element of causal relationship. Without it, appellant has not met her burden of proof. The Board will therefore affirm the Office's October 13, 2005 decision denying her claim for benefits.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.¹⁰ The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."¹¹

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously

⁷ *Caroline Thomas*, 51 ECAB 451 (2000).

⁸ *Guadalupe Julia Sandoval*, 30 ECAB 1491 (1979); see 5 U.S.C. § 8101(2) (the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law).

⁹ *Barbara J. Williams*, 40 ECAB 649, 657 (1988).

¹⁰ 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.605 (1999).

considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹²

An application for reconsideration must be sent within one year of the date of the Office's decision for which review is sought.¹³ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁴

ANALYSIS -- ISSUE 2

In her April 7, 2006 request for reconsideration, appellant gave the Office a more detailed account of what happened on May 10, 2005. The Office had earlier requested a more detailed account but did not deny her claim because she failed to respond within the time allowed. There was already enough evidence in the record to paint a reasonably full picture of how the incident occurred. What was lacking was a physician's opinion on causal relationship. No physician had explained whether the May 10, 2005 incident caused an injury.

Although this is the fundamental issue in her case and the reason the Office denied her claim, appellant did not address this matter in her request for reconsideration by submitting a physician's opinion on causal relationship. Her more detailed account of what happened is welcomed but has no bearing on the medical issue of causal relationship. No additional reports from physical therapists can resolve the matter because physical therapists are not "physicians" under the Act. Only a physician can competently address the issue. In short, appellant's request for reconsideration is not relevant to the issue of causal relationship.

Because appellant's April 7, 2006 request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law, does not advance a relevant legal argument not previously considered by the Office and provides no relevant and pertinent new evidence not previously considered by the Office, the Board finds that the Office properly denied a reopening of appellant's case for a review on its merits. The Board will affirm the Office's May 30, 2006 decision denying appellant's request.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty. No physician has supported her claim with an opinion on whether the May 10, 2005 incident caused a left ankle injury. The Board also finds

¹² *Id.* at § 10.606.

¹³ *Id.* at § 10.607(a).

¹⁴ *Id.* at § 10.608.

that the Office properly denied appellant's April 7, 2006 request for reconsideration. The request meets none of the standards for obtaining a merit review of her case.

ORDER

IT IS HEREBY ORDERED THAT the May 30, 2006 and October 13, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 30, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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