United States Department of Labor
Employees' Compensation Appeals Board

A.J., Appellant	)	
and	)	**Docket No. 06-1253**
	)	**Issued: October 6, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Denver, CO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 1, 2006 appellant filed a timely appeal from the January 30, 2006 merit decision of the Office of Workers' Compensation Programs' denying her claim for benefits. Under 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 has met her burden of proof to establish that she sustained an employment-related left calf injury.

FACTUAL HISTORY

On February 7, 2005 appellant, then a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date her calves hurt as a result of standing long hours on a concrete floor. She did not stop work.

In a February 7, 2005 duty status report, Dr. Robert C. Maiocco, an emergency medicine physician, noted appellant's complaint of her calves hurting from standing. He provided

restrictions of sitting 50 percent of the time. Dr. Maiocco provided no diagnosis. In a February 9, 2005 duty status report, he diagnosed "pain in joint involving lower leg" and advised that appellant could return to regular duty on February 9, 2005. Dr. Maiocco opined that appellant's leg pain was not work related.

Appellant also submitted a February 7, 2005 Form CA-16 and a February 7, 2005 treatment note from Michelle DeGraves, a physician's assistant.

In a letter dated December 28, 2005, the Office advised appellant that the evidence submitted was insufficient to support her claim. It informed appellant that the Federal Employees' Compensation Act does not recognize a physician's assistant, a nurse or a physical therapist as a qualified physician. The Office instructed appellant to provide additional factual and medical evidence, including a comprehensive medical report from her treating physician describing her symptoms, results of examinations and tests, diagnosis, the treatment provided and the doctor's opinion with medical rationale on the cause of her condition.

Appellant submitted a January 13, 2006 response. She described her work as a mail handler, the duties of which required her to stand. Appellant also described the pain she experienced in her left calf while working on February 6, 2005 and submitted a statement from Rose Lathrop, a coworker, to support the events of February 6, 2005. Appellant submitted x-ray results of February 8, 2005, which noted no evidence of deep venous thrombosis and x-ray results of February 16, 2005, which noted a normal left tibia and fibula. A February 28, 2005 report and physical therapy notes dated March 10, 2005 from Bradley G. Schoonveld, a physical therapist; and April 8 and 15, 2005 reports from Melinda Sharkey, a physician's assistant. Ms. Sharkey also noted the results of a magnetic resonance imaging (MRI) scan.[1]

By decision dated January 30, 2006, the Office denied appellant's claim for compensation. The Office found that the claimed incident occurred but that the medical evidence did not established that the event caused an injury.

LEGAL PRECEDENT

An employee seeking benefits under the Act has the burden of establishing the essential elements of her claim including the fact that an injury was sustained 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.[2] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

[1] Appellant also submitted an August 22, 2005 report from a physician with an illegible signature diagnosing a lumbar/wrist sprain as a result of lifting stack of hampers on June 28, 2005. This does not pertain to the present appeal as the Office has not issued a decision regarding appellant's wrist or back. *See* 20 C.F.R. § 501.2(c).

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

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.[4] 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.[5] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[6] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[7]

ANALYSIS

The evidence establishes that appellant was standing at work on February 7, 2005. Thus, she has established the factual element of her claim.

However, appellant has not met her burden of proof because she did not submit sufficient medical evidence to establish that standing at work on February 7, 2005 caused or aggravated a diagnosed medical condition. The evidence of record is insufficient to show that the incident of February 7, 2005 caused or aggravated a left calf condition. Appellant submitted reports and notes from physician assistants Melinda Sharkey and Michelle DeGraves and from physical therapist Bradley G. Schoonveld. These reports do not constitute probative medical evidence as physician assistants and physical therapists are not physicians as defined under the Act.[8]

In a February 9, 2005 duty status report, Dr. Maiocco specifically opined that appellant's "pain in joint involving lower leg" was not work related. Furthermore, pain is considered a symptom, not a diagnosis and does not constitute a basis for payment of compensation in the

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995); *see also Ellen L. Noble*, 55 ECAB ___ (Docket No. 03-1157, issued May 7, 2004); *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton, supra* note 2.

[5] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

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

[7] *Charles E. Evans*, 48 ECAB 692 (1997).

[8] The Act, at 5 U.S.C. § 8101(2), provides that medical opinion, in general, can only be given by a qualified physician. *See David P. Sawchuk*, 57 ECAB ___ (Docket No. 05-1635, issued January 13, 2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the Act); *Roy L. Humphrey*, 57 ECAB ___ (Docket No. 05-1928, issued November 23, 2005).

absence of objective findings of disability.[9] The diagnostic tests of record were normal and the treatment notes from Dr. Maiocco address mostly pain complaints. Appellant has not submitted sufficient medical evidence to establish a diagnosed condition causally related to the accepted incident at work.

An award of compensation may not be based on appellant's belief of causal relationship.[10] 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.[11] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[12]

Although the Office had informed appellant of the necessity of submitting medical evidence from a qualified physician which established causal relationship in its December 28, 2005 letter, she did not submit sufficient medical evidence in support of her claim. As appellant has failed to submit any medical evidence supporting a causal relationship between a diagnosed condition and the February 7, 2005 incident, she has failed to meet her burden of proof that she sustained an injury in the performance of duty, as alleged. Accordingly, the Board finds that the Office properly denied her claim for benefits under the Act.

CONCLUSION

Appellant has not met her burden of proof in establishing that her left calf condition was caused or aggravated by the February 7, 2005 employment incident.

[9] *See John L. Clark*, 32 ECAB 1618 (1981).

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

[11] *Florencio D. Flores*, 55 ECAB ___ (Docket No. 04-942, issued July 12, 2004).

[12] 20 C.F.R. § 10.303(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 30, 2006 is affirmed.

Issued: October 6, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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