United States Department of Labor
Employees' Compensation Appeals Board

N.P., Appellant	)	
and	)	**Docket No. 07-654**
	)	**Issued: June 19, 2007**
DEPARTMENT OF AGRICULTURE, FSIS-INSPECTION OPERATIONS PROGRAM, Logansport, IN, Employer	)	

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 January 10, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 18, 2006, which denied her traumatic injury claim, and an October 24, 2006 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.[1]

ISSUES

The issues are: (1) whether appellant established that she sustained a traumatic injury in the performance of duty; and (2) whether the Office properly denied her request for reconsideration.

[1] The record includes evidence received after the Office issued the October 24, 2006 decision. The Board cannot consider new evidence for the first time on appeal. 20 C.F.R. § 501.2(c) (2004).

FACTUAL HISTORY

On August 1, 2006 appellant then a 54-year-old part-time inspector, filed a traumatic injury claim alleging that on July 21, 2006 she sustained a right foot injury when she fell while walking up the stairs at her place of employment.

In an August 15, 2006 letter, the Office requested additional information from appellant.

In an August 9, 2006 report, Dr. Anthony E. Miller, Board-certified in family medicine, diagnosed an "injury" and included an ICD-9 code of 959.7 for knee, leg, ankle and foot. In the report, he marked "no" in response to the question "Do you believe the condition found was caused or aggravated by the employment activity described?"

In an August 22, 2006 letter to the Office, the employing establishment reported that no one saw appellant fall.

The Office received appellant's chart notes for visits from March 21 through August 15, 2006 with Dr. Miller. It also received three work excuse notes dated August 1, 8 and 15, 2006 from Dr. Miller.

In an August 28, 2006 letter, Charles A. Porter stated that on July 21, 2006 he was walking behind appellant up a flight of stairs, he turned around briefly and when he turned back appellant was sitting on the steps. He asked her what happened and she told him that she had fallen.

In an August 30, 2006 letter, appellant described her fall and the history of her condition.

By decision dated September 18, 2006, the Office denied appellant's claim on the grounds that the medical evidence of record did not establish that her medical condition resulted from the accepted incident.

On October 10, 2006 appellant requested reconsideration. She submitted copies of her August 30, 2006 letter, Mr. Porter's August 28, 2006 letter and the August 9, 2006 physician's report.

By decision dated October 24, 2006, the Office denied reconsideration on the grounds that the evidence submitted in support of the request was repetitious and irrelevant.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and 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.[2]

An employee seeking benefits under the Act[3] has the burden of establishing that he or she sustained an injury while in the performance of duty.[4] 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 that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[5] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[6]

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained a right foot injury on July 21, 2006 when she fell while walking up the stairs in the performance of her duties. The Office accepted that the employment incident occurred as alleged. The issue on appeal is whether the employment incident caused a personal injury. The Board finds that the medical evidence does not establish that appellant sustained an injury related to the accepted incident.

The medical reports submitted fail to provide a diagnosis. The August 9, 2006 report of Dr. Miller noted a diagnosis of an unspecified "injury." He failed to provide a firm diagnosis of any condition to appellant's right ankle or foot.[7] A physician's mere diagnosis of "injury" does not constitute a basis for payment of compensation. The other medical documents of record were work excuse notes and chart visit notes, none of which provided a diagnosis of appellant's condition.

Moreover, the medical reports fail to provide any opinion on causal relation. In order to establish fact of injury, appellant must submit probative medical evidence on causal relationship between a diagnosed condition and the employment incident. The August 9, 2006 physician's report of Dr. Miller marked "no" in response to the question "Do you believe the condition found

[2] *Anthony P. Silva*, 55 ECAB 179 (2003).

[3] 5 U.S.C. §§ 8101-8193.

[4] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

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

[6] *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id*.

[7] *See Ruth C. Borden*, 43 ECAB 146 (1991); *Val D. Wynn*, 40 ECAB 666 (1989).

was caused or aggravated by the employment activity described?" This report of the physician does not support appellant's claim that she sustained an injury during the accepted fall at work. The other medical documents of record also failed to address the issue of causal relationship.

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.[8] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[9] This is not such a situation of a readily apparent injury. Therefore appellant must submit a reasoned medical opinion on causal relation between a diagnosed condition and the accepted work-related incident.

In absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, the Board finds that appellant did not meet her burden of proof.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office regulation provides that the application for reconsideration, including all supporting documents, 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 considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[10]

ANALYSIS -- ISSUE 2

Appellant submitted copies of record documents previously with her October 20, 2006 request for reconsideration. Her August 30, 2006 letter, the August 28, 3006 letter from Mr. Porter and the August 6, 2006 physician's report were all previously considered in the Office's September 18, 2006 decision. In order to require the Office to reopen a case for reconsideration, appellant must submit relevant and pertinent new evidence not previously considered by the Office. Appellant's supporting documents were all previously considered by the Office in its September 18, 2006 decision. The Board has held that the submission of evidence which repeats or duplicates evidence already of record does not constitute a basis for reopening a case.[11]

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

[9] *Id*.

[10] 20 C.F.R. § 10.606(b)(2)(iii) (2004).

[11] *David J. McDonald*, 50 ECAB 185, 190 (1998); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

The Office will also reopen a case if appellant shows that the Office erroneously applied or interpreted a specific point of law or if appellant advances a relevant legal argument not previously considered by the Office. Appellant made no such argument in her request for reconsideration. She is not entitled to further review of the merits of her claim. The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant failed to establish that she sustained a traumatic injury in the performance of duty. Additionally, the Office properly denied her request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the October 24 and September 18, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 19, 2007
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