United States Department of Labor
Employees' Compensation Appeals Board

C.N., Appellant	)	
and	)	**Docket No. 07-28**
	)	**Issued: March 2, 2007**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Washington, DC, 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 October 2, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 19, 2006 which denied her claim for a head injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met her burden of proof in establishing that she sustained a head injury in the performance of duty.

FACTUAL HISTORY

On April 27, 2006 appellant, then a 57-year-old security officer, filed a claim alleging that, on April 20, 2006, she struck her head on a beam in the stairwell of the employing establishment while in the performance of duty. She stopped work on April 20, 2006. In a

witness statement on the CA-1, Omar J. Reynoso, a coworker, indicated that, on April 20, 2006, he saw appellant hit her head in the stairwell while at work.

Appellant submitted a report of a computerized tomography (CT) scan of the maxial/facial full sinus, dated May 2, 2006, prepared by Dr. Sangeeta Srivastava, a Board-certified radiologist. The CT scan revealed no evidence of a fracture or abnormality involving the left orbit including the left orbital wall and the intraconal structures. Also submitted were physical therapy notes dated July 6 to 16, 2006 for treatment and therapy including electrical stimulation of the left ankle.

By letter dated August 18, 2006, the Office asked appellant to submit additional information including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed head injury.

Appellant submitted physical therapy notes from June 13 to August 23, 2006 which noted that appellant underwent electrical stimulation of the left ankle.

In a decision dated September 19, 2006, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by the factors of employment as required by the Federal Employees' Compensation Act.[1]

LEGAL PRECEDENT

An employee seeking benefits under the Act 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 the applicable time limitation of the Act, 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

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.[3] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee

[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS

The Office properly found that the April 20, 2006 incident occurred as appellant alleged.[7] The Board finds, however, that the medical evidence is insufficient to establish that appellant sustained a head injury causally related to the April 20, 2006 incident. On August 18, 2006 the Office advised appellant of the medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated her claimed condition.

Appellant submitted a CT scan of the maxial/facial full sinus dated May 2, 2006, which revealed no evidence of a fracture or abnormality involving the left orbit including the left orbital wall and the intraconal structures. However, this report does not provide reference to the April 20, 2006 incident or a physician's rationalized opinion regarding the causal relationship between appellant's head injury and the factors of employment believed to have caused or contributed to such condition.[8] For example, appellant did not submit a physician's report explaining how the April 20, 2006 work incident caused or aggravated a specific medical condition. She submitted various physical therapy notes from June 13 to August 23, 2006. However, the Board has held that treatment notes signed by a physical therapist are not

[4] *Id*.

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

[6] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[7] Although appellant's supervisor noted on the Form CA-1 that appellant was on a break when she struck her head, the employing establishment did not dispute that appellant was in the performance of duty at the time of the incident.

[8] *Id*.

considered medical evidence as a physical therapist is not a physician under the Act.[9] Therefore, these reports are insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[10]

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a head injury causally related to her April 20, 2006 employment incident.[11]

[9] *See* 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

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

[11] With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 2, 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