United States Department of Labor
Employees' Compensation Appeals Board

B.O., Appellant	)	
and	)	**Docket No. 08-431**
	)	**Issued: August 5, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Detroit, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 26, 2007 appellant filed a timely appeal from the merit decisions of the Office of Workers' Compensation Programs' dated March 20 and October 15, 2007, denying her claim for compensation beginning October 31, 2006. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant is entitled to wage-loss compensation benefits beginning October 31, 2006 due to her accepted injury of September 30, 2006.

FACTUAL HISTORY

On October 5, 2006 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim alleging that on September 30, 2006 she fell after putting mail in a box and sustained injuries to her right hip, knee, ankle and left ankle. By letter dated October 10, 2006, the employing establishment controverted the claim. By letter dated October 23, 2006, the Office accepted appellant's claim for right knee contusion, right knee strain, right hip contusion and

right ankle strain.[1] Appellant filed claims for compensation from November 14 through December 1, 2006.

In support of her claim, appellant submitted reports from several physicians at the Henry Ford Medical Centers. In a medical form report dated October 19, 2006, Dr. Raimonds Zvirbulis, a Board-certified orthopedic surgeon, indicated that appellant could not work from September 30 to October 30, 2006. In a report dated October 26, 2006, he indicated that appellant may return to work on October 30, 2006 with restrictions of no repetitive squatting, bending or lifting and two-hour mail carry only. Dr. Zvirbulis noted that the restriction would remain effective until November 6, 2006. However, in a form dated October 31, 2006 Dr. Archana Reddy, a Board-certified internist, stated that appellant could not work from October 31 through November 6, 2006. She noted hip/ankle pain. In a form dated November 6, 2006, Dr. Zvirbulis indicated that appellant could not work at all from November 6 through December 10, 2006 due to "other bilateral OA [osteoarthritis], chondromalacia patella." In a November 6, 2006 note, he indicated that appellant had a history of falling on October 16, 2006 while at work. Dr. Zvirbulis noted that appellant fell on her right side and sustained a contusion to the right hip and right knee. He noted that she also complained of left ankle pain. Dr. Zvirbulis indicated that appellant continued to complain of pain on the right lateral hip and noted that she may have sprained her left ankle.

In a form report dated December 11, 2006, Dr. Dean I. Moore, indicated that appellant could not work from December 11, 2006 through January 12, 2007, noting osteoarthritis.

By letter dated January 5, 2007, the Office indicated that it needed further evidence to support ongoing disability.

In a form letter dated January 11, 2007, Dr. Zvirbulis diagnosed right hip and knee pain and indicated that appellant could not work from January 11 through February 11, 2007.

Appellant continued to file claims for loss of compensation from January 27 through March 9, 2007.

By decision dated March 19, 2007, the Office denied appellant's claim for compensation for the period commencing October 31, 2006 and continuing.

By form letter dated March 12, 2007 and received by the Office on March 26, 2007, Dr. Zvirbulis indicated that appellant could do no work from March 12 to April 16, 2007, noting lateral meniscal tear, right and left ankle pain.

By letter from her attorney dated April 10, 2007, appellant requested an oral hearing before an Office hearing representative.

[1] The Board notes that appellant filed a prior claim for contusion of left hand and finger, contusion of back and right knee and right knee lateral mensiscus tear. On November 17, 2005 the Office terminated appellant's entitlement to compensation and medical benefits in this case because she no longer suffered residuals of her work-related injuries under this claim.

In an April 4, 2007 report, Dr. Richard Needleman, a Board-certified orthopedic surgeon, indicated that appellant fell down one or two steps on September 30, 2006 and by history sustained an injury to her right knee, right hip and left ankle. He noted that appellant's ankle was still bothering her. Dr. Needleman assessed a history of partial Achilles tendon tear of approximately eight months duration. He put her in a short leg cast. In a form letter dated June 6, 2007, Dr. Needleman stated that appellant could not work from June 6 to 27, 2007, noting a ruptured left Achilles tendon. In a letter dated June 27, 2007, he extended this work prohibition to July 27, 2007. In a report also dated June 27, 2007, Dr. Needleman noted that appellant's partial Achilles tendon tear of left foot was currently asymptomatic.

In a May 29, 2007 note, Dr. Zvirbulis indicated that appellant was complaining of right knee pain.

At a hearing held on July 30, 2007 appellant testified that it was her left ankle that she injured, not her right ankle. She indicated that she went back to work on October 30, 2006 but that was the last day she worked.

In a form letter dated July 18, 2007, Dr. Needleman indicated that appellant could not work from July 18 to August 27, 2007 and noted a diagnosis of torn Achilles left tendon. In a July 27, 2007 report, he listed his assessment as right knee pain likely due to osteoarthritis.

In a letter dated September 13, 2007, the Office indicated that appellant was being treated for left torn Achilles tendon which is not part of her accepted conditions. Appellant was provided with an opportunity for submitting evidence that her torn Achilles tendon was the result of her September 30, 2006 employment injury.

By decision dated October 15, 2007, the hearing representative determined that appellant had not established her entitlement to wage-loss compensation beginning October 31, 2006 was due to the accepted conditions of her claim. Accordingly, she affirmed the Office's March 20, 2007 decision.

LEGAL PRECEDENT

The term disability as used in the Federal Employees' Compensation Act[2] means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of the injury.[3] Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.[4] When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in the employment held when injured, the employee is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity.[5] The Board will not require the Office to pay compensation for disability

[2] 5 U.S.C. §§ 8101-8193; 20 C.F.R. § 10.5(f).

[3] *Sean O'Connell*, 56 ECAB 195 (2004).

[4] *Paul E. Thams*, 56 ECAB 503 (2005).

[5] *Id.*

in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.[6]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.[7] Rationalized medical evidence is medical evidence which includes a physician's rationalized medial 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.[8] Neither the 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 causal relationship.[9]

ANALYSIS

In the instant case, the Office accepted appellant's claim that as a result of the injury of September 30, 2006 appellant sustained a right knee contusion, right knee strain, right hip contusion and right ankle strain. Appellant filed claims for periods of disability commencing October 31, 2006.

The Board finds that appellant did not establish entitlement to disability compensation after October 31, 2006. The Board notes that the opinions of Drs. Zvirbulis, Reddy, Moore and Needleman never make a correlation between appellant's accepted conditions and her alleged disability. Furthermore, the medical reports of Drs. Zvirbuluis and Needleman attributed certain periods of appellant's disability to lateral meniscus tear, osteoarthritis and a partial tear of the left Achilles tendon. However, these conditions were not accepted by the Office. As it did not accept these conditions as employment related, the burden of proof is on appellant to establish causal relationship. The Board finds that appellant did not submit any rationalized medical report explaining how these injuries were causally related to the accepted employment injury.

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 her belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by

[6] *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[7] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

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

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

rationalized medical opinion evidence.[10] As appellant failed to submit such evidence, the Office properly denied her claim for compensation beginning October 31, 2006.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for wage-loss compensation beginning October 31, 2006 due to her accepted injury of September 30, 2006.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 15 and March 20, 2007 are affirmed.

Issued: August 5, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[10] *Id.*