

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

K.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
New York, NY, Employer**

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**Docket No. 09-2035
Issued: April 21, 2010**

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 August 4, 2009 appellant filed a timely appeal from a March 19, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 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 established an injury in the performance of duty on January 12, 2005.

FACTUAL HISTORY

The case was before the Board on two prior appeals. In a decision dated April 5, 2007, the Board affirmed a November 15, 2005 Office decision denying the claim for compensation.¹ The Board found the evidence was not sufficient to establish an incident as alleged. It also noted that the medical evidence did not contain a rationalized medical opinion on causal relationship

¹ Docket No. 07-247 (issued April 5, 2007).

between a diagnosed condition and an employment incident. The Board also affirmed a March 15, 2006 decision denying further merit review of the claim. In a decision dated November 10, 2008, the Board remanded the case for a merit decision.² The Board found appellant had submitted new and relevant evidence as to the alleged January 12, 2005 employment incident. The history of the case as set forth in the Board's prior decisions is incorporated herein by reference.

By decision dated March 19, 2009, the Office modified its prior decision to find that appellant had established the January 12, 2005 forklift incident as alleged. It denied the claim for compensation on the grounds that the medical evidence was insufficient to establish an injury related to that incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 which 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 In a traumatic injury claim, a rationalized medical opinion supporting causal relationship is required.⁶

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

² Docket No. 08-1292 (issued November 10, 2008).

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 *Id.*

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

ANALYSIS

The Office accepted that an employment incident occurred on January 12, 2005 when appellant was struck on the back of the right ankle by a forklift. Since the first component in establishing an injury in the performance of duty is established, the issue is whether he sustained an injury causally related to the employment incident. As noted, the evidence must include a rationalized medical opinion on causal relationship between a diagnosed condition and the January 12, 2005 employment incident.

The Board noted in its prior decisions that the medical evidence submitted through the March 15, 2006 Office decision did not contain a rationalized medical opinion. Appellant submitted brief notes from Dr. Sosale Jayaram, an internist, regarding treatment in 2005, but they did not include a complete history or a rationalized medical opinion on the issue of causal relation. A January 18, 2005 note referred to right ankle trauma, without providing additional detail, a diagnosis or an opinion on causal relationship. As to the medical evidence submitted after March 15, 2006, the record contains an August 9, 2005 report from Dr. Edward Lee, an orthopedic surgeon, and an October 12, 2006 report from Dr. Jayaram.⁸ Dr. Lee provided a history of right knee and hip pain for about five years. He provided results on examination and diagnosed right hip osteoarthritis and right knee pain status post two arthroscopic surgeries. Dr. Lee did not provide a history of the January 12, 2005 incident or a rationalized medical opinion on causal relationship. He did not explain how either the right hip arthritis or knee pain was caused or contributed to by the accepted incident.

On October 12, 2006 Dr. Jayaram stated that he treated appellant on June 24, 2005 for right ankle discomfort and appellant attributed his condition to a work-related injury. Dr. Jayaram did not provide a complete medical history, a firm diagnosis or a rationalized medical opinion between the right ankle discomfort and the January 12, 2005 employment incident. This is important as the physician treated appellant a year after the incident at work.

It is appellant's burden of proof to establish the claim for compensation. The Board finds appellant did not submit sufficient medical evidence to meet his burden of proof in this case.

CONCLUSION

The Board finds that the medical evidence is not sufficient to establish an injury in the performance of duty on January 12, 2005.

⁸ Appellant did submit a medical report on appeal. The Board is limited to review of evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 19, 2009 is affirmed.

Issued: April 21, 2010
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