United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 10-1696**
	)	**Issued: April 21, 2011**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Richmond, VA, Employer	)	

Appearances:
Thomas Martin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 14, 2010 appellant, through her attorney, filed a timely appeal from a May 13, 2010 merit decision of the Office of Workers' Compensation Programs denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act[1] and 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 met her burden of proof to establish that she sustained an injury in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 29, 2008 appellant, then a 54-year-old revenue agent, filed a traumatic injury claim (Form CA-1) alleging that on November 23, 2005 she sustained an ankle injury.[2] She notified her employer of her injury on February 15, 2008. The employing establishment controverted the claim as the date of notice was well over 30 days after the date of injury and because no medical documentation had been provided.

By letter dated February 21, 2008, the Office informed appellant that no evidence had been received in support of her claim, requested additional factual and medical evidence and asked her to respond to the provided questions which were to be submitted within 30 days. It also requested additional factual information from the employing establishment by letter of the same date.

In a February 25, 2008 narrative statement, appellant reported that on November 23, 2005 she was walking out of the office with Estella Dunbar when she slipped on the carpet and twisted her ankle. She stated that she went to the emergency room because her ankle was black and blue but left after three hours when she had not been seen. Appellant filed an accident report the following day with her supervisor, Tonya Mitchel. She indicated that she went to see her physician on November 24, 2005 who recommended elevating her foot and putting ice on it. Appellant stated that she had been back to the doctor several times since the incident because the pain had gotten worse, causing her to limp occasionally. She noted that the pain had also begun to radiate up her leg into her lower back and that her ankle was constantly swollen.

By decision dated March 28, 2008, the Office denied appellant's claim because she did not establish that she sustained an injury, noting that she did not submit any medical evidence.[3]

On September 2, 2008 appellant, through counsel, requested reconsideration of the Office decision, stating that two medical reports from Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, and a declaration from appellant were forthcoming. In an August 25, 2008 narrative statement, she reported that when she was first injured, she notified Ms. Mitchel right away. Appellant stated that it seemed her injury was getting better but she began feeling more pain. She realized it was not going away and decided to file a claim. Appellant noted that she had no similar ankle injuries.

In a May 19, 2008 Kaiser Permanente medical report, Dr. Jin Xiao, Board-certified in occupational medicine, provided detailed medical information regarding appellant's Kaiser Permanente medical history and provided physical findings for her left ankle injury.

[2] The Office noted that, though appellant's Form CA-1 was filed for a November 23, 2005 ankle injury, the injury occurred on November 21, 2005 which was correctly noted on the IRS (Form 9154) and thus, explains the Kaiser Urgent Care visit on November 22, 2005.

[3] The Office also noted that appellant filed two other workers' compensation claims at the same time as this ankle claim. The first claim was for a pulmonary condition which was denied on March 28, 2008, File No. xxxxxx925. The second claim was for a carpal tunnel condition which is currently being developed by the Office, File No. xxxxxx765.

Dr. Xiao noted a November 22, 2005 medical report from Dr. Natalie Sanders, Board-certified in internal medicine, which stated that appellant tripped and bent her ankle the previous night. Dr. Sanders diagnosed appellant with an ankle sprain, finding moderate soft tissue swelling on the left lateral ankle and exquisite tenderness.

Dr. Xiao referenced a January 23, 2007 Kaiser Urgent Care clinic visit which showed that appellant had an ankle sprain from November 2006 and continued to have pain on and off.[4]

Dr. Xiao also reported a January 29, 2007 medical report from Dr. Walfrido Castelo, a Board-certified diagnostic radiologist, which stated that appellant was complaining of pain and inflammation from her ankle to hip on the left side of her body and intermittent mild pain in her left ankle which was aggravated by walking and standing. Dr. Castelo reviewed appellant's medical history and x-rays and upon physical examination, reported that her left ankle exhibited normal range of motion with no swelling, ecchymosis or deformity. He noted lateral malleolus tenderness, that the Achilles tendon exhibited no pain, and reported normal Thompson's test results. Dr. Castelo also stated that appellant's left foot exhibited normal range of motion with no tenderness, bony tenderness, swelling or crepitus.

In his May 19, 2008 medical report, Dr. Xiao noted that appellant was retired as of May 10, 2008 due to carpal tunnel syndrome. He reported that she twisted her left ankle when she slipped and fell on carpet in November 2005, experiencing acute onset of pain in the left ankle followed by the swelling.[5] Dr. Xiao noted that most ankle sprains would resolve within one to six months postinjury, although in some cases, the patient may continue to have residual symptoms. He noted that appellant had subjective complaints with unremarkable objective findings. Dr. Xiao recommended a home exercise program, an ankle wrap and to resume activity as tolerated.

In a June 3, 2008 medical report, Dr. Tauber reported that appellant's employment had physical requirements which consisted of prolonged standing, bending, twisting, stooping, repetitive movements of the upper and lower extremities, as well as gripping, grasping, torquing and fine finger manipulation. He noted her former work schedule as 5 days a week, 10 hours a day and stated that she was not currently working, her last day of work being August 4, 2004. Dr. Tauber stated that appellant bent her left ankle when she slipped on the carpet as she was leaving the office in November 2005. Appellant experienced left ankle pain associated with swelling and bruising and began to experience pain in both knees as well as lower back and ankle pain. Dr. Tauber noted that she was first evaluated at Kaiser Permanente for this ankle injury.

Dr. Tauber reported that appellant was experiencing frequent lower back pain which was radiating from the left ankle. The pain would increase with sitting, walking, standing, forward

[4] The same report noted that appellant also had left knee, hip and lower back pain for about two weeks, receiving a brace and nonsteroid anti-inflammatory drugs. Appellant had a nerve conduction study done in February 2007 which showed left moderate carpal tunnel syndrome. The report noted that she had been off work since August 2007.

[5] Dr. Xiao noted that appellant did not file a work injury claim until more than 2.5 years later and that she had three separate work injury claims, bilateral carpal tunnel syndrome having been the only one accepted as a work-related injury.

bending, squatting, stooping, climbing or descending stairs, twisting, turning and forceful pushing and pulling. Appellant was also experiencing occasional pain in the right and left knees which would increase with walking, standing, flexing and extending the knee and climbing or descending stairs. The pain in her left ankle was constant which would increase with standing or walking and the physician noted swelling and discoloration of the ankle. Dr. Tauber diagnosed appellant with possible instability and possible derangement of the left ankle from her prior left ankle sprain. He recommended a magnetic resonance imaging (MRI) scan of her left ankle.

In an August 5, 2008 medical report, Dr. Tauber stated that appellant had continued pain along the lateral aspect of her ankle, as well as low back pain and knee pain. Upon physical examination, he noted that she continued to have tenderness at her left ankle as well as pain on her knee. Dr. Tauber noted that the MRI scan of appellant's left ankle demonstrated an old sprain of the anterior talofibular ligament with joint effusion. He stated that the injury of the ligament was clearly related to the November 2005 incident which was confirmed by the MRI scan and her history. Dr. Tauber recommended an MRI scan of the knee and lumbar spine and noted that appellant could wear a brace or undergo surgery to reconstruct/repair the ligament.

By decision dated October 31, 2008, the Office affirmed the Office's March 28, 2008 decision finding that fact of injury had not been established. It specifically noted that there was no evidence that appellant advised Ms. Mitchel of the alleged incident and no witness statements.

By letter dated October 29, 2009, appellant, through counsel, requested reconsideration of the October 31, 2008 Office decision.

In support of her reconsideration request, appellant submitted a December 14, 2005 Internal Revenue Service (IRS) report of occupational injury, illness, accident or unsafe condition Form 9154 from Ms. Mitchel. She filed the form on November 23, 2005 and indicated that the injury occurred on November 21, 2005 at 6:00 p.m. when she was leaving the office and tripped on the carpet, causing her left ankle to twist resulting in swelling and bruising. Dated and signed by Ms. Mitchel on December 14, 2005, she stated that appellant informed her sometime ago about the injury indicating that she was rushing to leave work and misstepped. Appellant did not lose a workday from the injury.

By decision dated May 13, 2010, the Office affirmed its October 31, 2008 decision, as modified, to reflect that the incident occurred as alleged. The claims examiner found, however, that the medical evidence did not support that her ankle condition was causally related to the employment incident on November 21, 2005.[6]

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, that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the

[6] *See supra* note 1.

employment injury.[7] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[8]

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.[9] 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 must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[10] 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. 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.[11]

ANALYSIS

The Office accepted that the November 21, 2005 incident occurred as alleged. The issue is whether appellant established that the incident caused a left ankle injury. The Board finds that she did not submit sufficient medical evidence to support that her ankle injury is causally related to the November 21, 2005 employment incident.[12] Appellant's decision to delay filing her claim for over two years significantly hampers the ability of the Office to investigate the factual and medical circumstances of her claim.

In his May 19, 2008 medical report, Dr. Xiao reported that appellant twisted her left ankle when she slipped and fell on carpet in November 2005, experiencing acute onset of pain in the left ankle followed by swelling. He noted that she was retired as of May 10, 2008 due to

[7] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

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

[9] *Elaine Pendleton*, *supra* note 7.

[10] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[11] *James Mack*, 43 ECAB 321 (1991).

[12] *See Robert Broome*, 55 ECAB 339 (2004).

carpal tunnel syndrome and that she did not file a work injury claim until more than 2.5 years later. Dr. Xiao noted that most ankle sprains would resolve themselves within one to six months postinjury and that appellant had subjective complaints with unremarkable objective findings. He did not explain why her condition was due to the November 21, 2005 employment incident and rather, noted unremarkable objective findings for a left ankle injury. Further, Dr. Xiao did not evaluate appellant until 2.5 years after the initial employment incident. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[13] Dr. Xiao merely reported the history related by appellant but did not discuss that history in light of his medical findings. Without medical reasoning explaining how appellant's employment factors caused her left ankle injury, his report is insufficient to meet her burden of proof.[14]

In a June 3, 2008 medical report, Dr. Tauber diagnosed appellant with possible instability and possible derangement of the left ankle from her prior left ankle sprain. He stated that her employment had physical requirements which consisted of prolonged standing, bending, twisting and stooping. Dr. Tauber noted that the constant pain in appellant's left ankle increased with standing or walking and that appellant was also experiencing right and left knee pain and lower back pain which radiated from her left ankle. He stated that she was not currently employed, her last day of work being August 4, 2004. Dr. Tauber's August 5, 2008 medical report evaluated an MRI scan of appellant's left ankle, reporting that the left ankle demonstrated an old sprain of the anterior talofibular ligament with joint effusion. He opined that based on the MRI scan and her medical history, the injury of the ligament was clearly related to the November 2005 incident.

The Board finds that the opinion of Dr. Tauber is not well rationalized. Dr. Tauber did not provide an adequate explanation of how the incident accepted in this case caused or contributed to any ankle condition or the need for treatment commencing in November 2005. While he noted that appellant underwent prior treatment for her ankle injury, he did not address how tripping over the carpet would contribute to or worsen her sprain of the anterior talofibular ligament.

Dr. Tauber had no contact with appellant prior to his June 3, 2008 evaluation. While he noted that she was initially evaluated at Kaiser Permanente and followed up a year later for examinations and x-rays, he did not set out any detail pertaining to her prior medical history or treatment. Moreover, Dr. Tauber did not specifically address the reports from Kaiser Permanente or Dr. Xiao, whose report noted that appellant had subjective complaints with unremarkable objective findings. Further, he stated that appellant's last day of work was August 4, 2004 when her work injury occurred on November 21, 2005. It is not clear that Dr. Tauber had a full or accurate history of her work or medical treatment.

Dr. Tauber noted that appellant worked 5 days a week for 10 hours a day and described the physical requirements of her employment but failed to identify how many hours she would stand in a day or the periods and frequency of other physical movements to establish how her ankle injury was aggravated. He did not explain how tripping on the carpet could have caused the left ankle sprain other than offering a generalized opinion that the constant pain in her left

[13] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[14] *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

ankle would increase with standing and that based on the MRI scan and appellant's medical history, the injury of the ligament was clearly related to the November 2005 incident. Dr. Tauber did not explain whether or how, appellant's MRI scan results could verify the date, the physical location, or the employment or nonemployment circumstances of a fall or other incident. Though he opined that her work situation was the factor that led to her left ankle sprain, he did not provide a well-rationalized opinion on causal relationship. Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.[15] Lacking a complete and accurate factual background, sufficient medical record review and rationale, Dr. Tauber's reports are insufficient to establish that appellant's left ankle condition was causally related to the November 21, 2005 employment incident.

The remaining medical evidence of record is also insufficient to establish a causal relationship between appellant's left ankle injury and the November 21, 2005 employment incident. The reports from the Kaiser Urgent Care Clinic, Dr. Sanders and Dr. Castelo, as noted by Dr. Xiao, failed to address the causal relationship between appellant's left ankle condition and the November 21, 2005 employment incident. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[16] Without medical reasoning explaining how appellant's tripping on the carpet caused her ankle injury, the reports are not sufficient to meet her burden of proof.[17]

In her appeal package, appellant provided a memorandum which recited the facts of the incident and summarized the favorable medical evidence. The memorandum also cited a Board opinion in *Donald W. Long* case as precedent establishing that the medical reports of Dr. Xiao and Dr. Tauber should be accepted as sufficient to meet her burden to establish causal connection between her traumatic incident of November 21, 2005 and the condition named in her application for benefits dated January 29, 2008.[18] Because the Office decision on appeal accepted that the incident of November 21, 2005 occurred as alleged, much of the factual material in appellant's memorandum is no longer relevant. The *Long* case is distinguishable on at least two significant points. It involved an occupational disease claim for the cumulative effect of lifting packages, boxes and pushing carts of mail rather than a claim for traumatic injury such as a fall and ankle sprain. Second, the legal definition of an occupational disease differs from that of a traumatic injury.[19] Because of different facts alleged and different legal requirements to establish the claims, the legal standards for the burden of proof for causal connection also differ between *Long* and the instant appeal. The Board is not persuaded to adopt appellant's conclusions as set forth in her memorandum.

[15] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[16] *Supra* note 12.

[17] *Supra* note 13.

[18] *Donald W. Long*, 41 ECAB 142 (1989). Appellant cited "*Donald W. Wong*" however the Board concludes that this was an oversight.

[19] *Patricia K. Cummings*, 53 ECAB 623 (2002).

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[20] An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.[21] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office properly denied her claim for compensation.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on November 21, 2005 in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

[20] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[21] *D.D.*, 57 ECAB 734 (2006).