United States Department of Labor
Employees' Compensation Appeals Board

TRESY BABY, Appellant	)	
and	)	**Docket No. 04-1686**
	)	**Issued: December 8, 2004**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, North Chicago, IL, Employer	)	

Appearances:
Tresy Baby, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On June 21, 2004 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs dated May 25, 2004, denying her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has merit jurisdiction over the issues in this case.

ISSUE

The issue is whether appellant has established that she sustained an injury in the performance of duty on February 6, 2000 when she slipped and fell in a parking lot.

FACTUAL HISTORY

On February 6, 2000 appellant, then a 45-year-old nursing service employee, filed a traumatic injury claim (Form CA-1), alleging that on that date, she slipped and fell on snow in a parking lot, striking her left buttock and left elbow. She stated that there was "[n]o external injury but pain at left side at back and thigh and l[ef]t forearm tingling pain to the fingers." On the reverse of the form, the employing establishment indicated that appellant "slipped on snow in

parking lot" and sought treatment that morning. The claim was processed as a "[n]o time lost and no medical expense" claim.

On December 8, 2003 appellant filed a notice alleging that she sustained an October 7, 2003 recurrence of disability causally related to the February 6, 2000 slip and fall. She asserted that following the original injury, she experienced pain and paresthesias in her left upper extremity and the left side of her neck, relieved by medications and chiropractic treatment. Appellant stated that she did not sustain any injuries between the February 6, 2000 incident and the claimed recurrence of disability. On the reverse of the form, Donna Michalowski, appellant's supervisor, noted that her claim for recurrence of disability was the first time she had "heard of [appellant's] physical problems." Appellant did not stop work.

In a March 3, 2004 letter, the Office advised appellant of the additional evidence needed to establish her claim, including a medical narrative from her attending physician explaining how and why any diagnosed condition would be related to the February 6, 2000 fall. The Office afforded her 30 days in which to submit such evidence.

In a March 22, 2004 letter, the Office advised appellant of the type of additional evidence needed to establish her claim for recurrence of disability. The Office noted that the traumatic injury claim was under development and awaiting a decision.

In a March 30, 2004 letter, the employing establishment stated that it owned and operated the parking lot in which appellant fell on February 6, 2000.[1] The employing establishment asserted that in the three years since the injury, she had not "complained of any effects of this fall" to her supervisor.

In an April 19, 2004 letter, the Office advised appellant that there was insufficient evidence to support her claim of a February 6, 2000 injury, as there was no diagnosis of any resulting injury or medical condition. The Office afforded appellant 30 days to submit additional evidence, including a history of injury and treatment, definite diagnoses of any conditions observed and a detailed narrative report from her attending physician explaining why the diagnosed conditions were related to the February 6, 2000 incident. No further medical evidence was received by the Office.

By decision dated May 25, 2004, the Office denied appellant's claim on the grounds that causal relationship was not established.[2] The Office found that the February 6, 2000 incident occurred at the time, place and in the manner alleged but that appellant submitted insufficient

[1] The Board notes that the employing establishment did not contest that the claimed February 6, 2000 injury occurred in the performance of duty. However, the Board also notes that appellant submitted sufficient evidence to establish that the parking lot in which she fell was on the employing establishment's premises. *Rosa M. Thomas Hunter*, 42 ECAB 500, 504 (1991).

[2] The Board notes that the Office's May 24, 2004 decision refers to Board precedents regarding a claimant's burden of proof in establishing a claim for traumatic injury and for a recurrence of disability. However, the decision does not appear to adjudicate appellant's claim for recurrence of disability. The Board notes that as the May 24, 2004 decision denied her claim for a February 6, 2000 traumatic injury, the issue of whether she sustained a recurrence of disability related to that alleged injury is moot.

medical evidence to establish that she sustained an injury resulting from the incident. The Office concluded that appellant had "not met the requirements for establishing that [she] sustained an injury as alleged."[3]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing that 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 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 which compensation is claimed is causally related to the employment injury.[5] 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.[6]

To determine whether an employee has sustained a traumatic injury in the performance of duty, "fact of injury" must first be 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.[7] 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 employment, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[8] Neither the mere 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]

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[3] Following the issuance of the May 25, 2004 decision and accompanying her request for appeal, appellant submitted additional factual and medical evidence. This evidence has not been considered by the Office. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant may submit such evidence to the Office accompanying a valid request for

[4] 5 U.S.C. § 8101 *et seq*.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *Gloria J. McPherson*, 51 ECAB 441 (2000); *Elaine Pendleton*, *supra* note 5.

[8] *Jennifer Atkerson*, 55 ECAB ___ (Docket No. 04-158, issued February 13, 2004). For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

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

ANALYSIS

In this case, the Office accepted that appellant slipped and fell on February 6, 2000 as alleged. Thus, she has met the first element of her burden of proof by establishing the claimed incident as factual. However, the Office found that as appellant did not submit sufficient medical evidence to establish that she sustained any injury resulting from the February 6, 2000 incident, she failed to meet the second element of her burden of proof.

The Board finds that appellant submitted no medical evidence in support of her claim prior to the issuance of the May 25, 2004 decision. Although the February 6, 2000 claim form indicates that appellant sought treatment that day, there are no such reports of record. The Board notes that the Office advised appellant in March 3 and April 19, 2004 letters of the necessity of submitting rationalized medical evidence to establish her claim. However, she did not submit any medical evidence. Thus, appellant has not established that she sustained any injury or condition causally related to the accepted February 6, 2000 fall.[10] Therefore, she has failed to meet her burden of proof.

CONCLUSION

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 25, 2004 is affirmed.

Issued: December 8, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

[10] *Deborah L. Beatty*, 54 ECAB ___ (Docket No. 02-2294, issued January 15, 2003).