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TAMIKO R. ROBERTSON, Appellant	)	
	)	
and	)	Docket No. 04-536
	)	Issued: June 16, 2004
U.S. POSTAL SERVICE, POST OFFICE,	)	
Tacoma, WA, Employer	)	
	)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

On December 19, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 10, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has established that she sustained an injury in the performance of duty on December 26, 2001.

On December 27, 2001 appellant, then a 33-year-old general clerk, filed a traumatic injury claim alleging that she suffered extreme right knee pain and muscle spasms with pain over her incision area which she attributed to a December 26, 2001 incident involving a coworker, Rob Salamone. Appellant alleged that, while she was resting her leg on the table during break time, Mr. Salamone came by and “yanked [her] leg off the table” because he said it should not be on the table and that she had “shit on [her] shoe.” Appellant went to the Health South Clinic on

December 27, 2001 but received actual medical care from the emergency room at Tacoma General Hospital on December 28, 2001, where she was diagnosed with a possible drop fracture or split fracture of the proximal head of the right tibia and placed off work for the rest of the day with instructions to follow-up with her treating physician, Dr. William J. Wilson, a Board-certified orthopedic surgeon, on January 7, 2002. Appellant worked a partial shift on December 31, 2001 and January 3, 2002 and returned to the emergency room at Tacoma General Hospital on January 3, 2002 where she was given a note to stay off work for two days. Appellant has not returned to work. The record reflects that appellant had surgery to the same knee in August 2001, under a prior claim, No. A14-0309060¹ and was working in a sedentary position at the time of the December 26, 2001 incident. On April 5, 2002 appellant underwent additional knee surgery.

In support of her claim, appellant submitted a January 7, 2002 report, Dr. Wilson noted that appellant was five months out from her tibial tubercle osteotomy. He reported that “[a] couple of weeks ago, she was at work with her foot elevated and a coworker told her to put her foot down. She objected and the coworker grabbed her leg and forced it off the stool and to the floor. She had immediate severe pain near the tibial tubercle. Swelling developed thereafter and she had a difficult time with walking.” Examination findings were noted. X-ray findings, taken in extension and 90 degrees of flexion, showed a fracture through the proximal screw hole with proximal migration of the proximal part of the tibial tuberosity about 3 or 4 millimeters, with no significant change noted when the knee went into flexion. Some evidence of bone healing was noted with the proximal fragment. Appellant was advised to stay off work until Dr. Wilson saw her in three weeks.

In a January 3, 2002 statement, Mr. Salamone advised that he was in the lunch room on December 26, 2001 and had walked by appellant’s table. He stated that “[s]he had her foot on the table and I told her it is not a good idea to have her foot on the table and, at the same time, I was helping her put her foot to the floor very gently. After putting her foot on the floor, she said ‘I don’t care what anyone thinks about putting my foot on the table.’ She then put her foot back on the table with no signs of any pain or trouble.” Mr. Salamone further stated that he did not do anything to hurt appellant and she did not show any signs of discomfort or pain at that time.

In a January 4, 2002 statement, Laura McCloskey attributed the incident as a joke and stated: “Mr. Salamone came up to the table and jokingly said to her to get her leg off the table ... Rob then, as part of the tease, lift[ed] her leg slightly, but certainly not forcefully. (emphasis in the original).” Ms. McCloskey indicated that she had no knowledge that appellant was in pain or that an injury had occurred.

In a January 4, 2002 statement, Michael Shaw advised that he was seated one table, approximately eight feet away and that he “looked up to see Rob placing [appellant’s] foot on the corner of the table. At that point [appellant] put her foot on the floor -- shortly thereafter she put it back up on the corner of the table.” He further stated that he did not recall appellant saying anything or making any indications that she was in pain. Mr. Shaw further stated that Mr. Salamone’s actions were not rough or violent in nature.

¹ Under this claim the Office accepted that appellant sustained employment-related right knee strain and chondromalacia patella. She had also sustained two nonemployment-related right knee injuries.

In a January 8, 2002 statement, Donna L. Brooks indicated that Mr. Salamone had lifted appellant's leg off the table and "she complained immediately that her knee hurt."²

In a January 23, 2002 statement, appellant advised that she was on her morning break with Ms. Brooks and Ms. McCloskey on December 26, 2001 when she was assaulted by Mr. Salamone. She indicated that her leg was elevated at an angle with her foot over the edge of the table. In pertinent part, appellant stated: "Mr. Salomone walks up and demands that I take my foot off the table because I had shit on my shoe ... I told him no I was not moving my leg and I didn't have shit on my shoe. He then proceeds to grab my leg and yank it off the table in a downward motion. I firmly tell him that that hurt and I wasn't going to take my leg off the table. I placed my leg back on the table. This action happened very quickly."

In a January 18, 2002 letter, the Office requested that Dr. Wilson provide a diagnosis for appellant's injury. The Office noted that a majority of the witnesses stated that appellant's foot was not forcefully put on the floor and that she did not complain of immediate pain. The Office requested that Dr. Wilson respond to a series of questions based on a nonviolent event.

In a January 24, 2002 report, Dr. Wilson advised that appellant had a fracture of the proximal portion of the tibial tubercle which had occurred in an injury at work about four weeks previously. He indicated that appellant still had considerable pain and swelling and noted his examination findings. Dr. Wilson advised that appellant was to remain off work and continue wearing the brace in full extension.

In a February 6, 2002 report, Dr. Wilson advised that he had read appellant's statement regarding the December 26, 2001 incident and reiterated that the diagnosis for the injury sustained on December 26, 2001 was a fracture of the tibial tubercle of the right knee where the patellar tendon attaches and that the fracture was confirmed on the January 7, 2002 x-rays. Dr. Wilson advised that the fracture most likely occurred when appellant's right leg was suddenly pushed off a table and resulted in sudden vigorous contraction of the quadriceps muscle, which avulsed the proximal portion of the tibial tubercle causing the fracture. He noted that, prior to this injury, appellant had been recovering nicely from surgery on her right knee, which involved an osteotomy and medial transfer of the tibial tubercle. He indicated that appellant was totally disabled until the tibial tubercle fracture healed properly, which he hoped would be within six to eight weeks. He advised that the prognosis for healing was guarded and, if there was not adequate evidence of healing in six to eight weeks, further surgery would be required. Dr. Wilson indicated that, during the interval between December 26, 2001 and January 7, 2002, there was likely some early healing taking place of this tibial tubercle fracture, but it was inadequate to demonstrate any significant healing on x-rays taken on January 7, 2002.

In a February 11, 2002 statement, Joseph E. Ahlman, in pertinent part, stated: "[w]hile resting her leg on the table during break time, Rob Salamone, came by and yanked her leg off the table."

In a February 14, 2002 report, Dr. Wilson opined that there had been no significant healing of the tibial tubercle fracture and the proximal fragment, although some haziness which

² This statement contains a typographical error indicating it was dated January 8, 2001.

was present did not appear to be healing well to the metaphysis of the tibia. A computerized axial tomography (CAT) scan was recommended. Appellant was not released back to work.

In a February 20, 2002 letter, the employing establishment challenged the claim on the basis that appellant's current condition was caused by her prior knee surgery and was not caused in the manner she stated. In a January 29, 2002 report, Dr. Kenneth D. Sawyer, the employing establishment's orthopedic medical consultant, advised that there was substantial evidence that the fracture Dr. Wilson found in his report of January 7, 2002, was not the result of the December 26, 2001 incident. He indicated that appellant had undergone surgery to the same knee four months prior, that the location of the fracture was where the surgery had been done and was actually through one of the screw holes. The physician indicated that the fracture reported by Dr. Wilson was a potential complication of the type of surgery appellant had, with or without any trauma. He indicated that Dr. Wilson reported that the x-rays taken on January 7, 2002 showed: "some evidence of bone healing" and indicated that such findings on x-ray did not show up in adults until 3 or 4 weeks following a fracture, yet appellant's alleged injury had occurred only 12 days prior. He indicated that Dr. Wilson had noted no significant motion of the fractured, displaced upper portion of the tibial tubercle on x-rays taken in flexion and extension, which was further evidence that the fracture was more than 12 days old. Dr. Sawyer further indicated that, even if appellant's foot had been dropped onto the floor from the table as alleged, there would be no stress on the tibial tubercle where the fracture was found, rather the stress would be on the posterior capsule on the opposite side of the knee. He stated that there would be much more stress on the tibial tubercle from simply getting up out of a chair (about 500 pounds of tension) than from the incident appellant described as having occurred on January 26, 2002.

In a decision dated February 28, 2002, the Office denied appellant's claim for compensation. It found that appellant had not established that the event occurred in a violent or forceful manner and that Dr. Wilson failed to establish any causal link between appellant's injury and work factors.³

In a March 7, 2002 letter, appellant requested an oral hearing, which took place on September 25, 2002.

The Office received additional evidence prior to the hearing. A February 8, 2002 investigative memorandum opined that, based on its investigation and documentation provided, appellant submitted a fraudulent workers' compensation claim as she had misrepresented the events of December 26, 2001 to such a degree that she had knowingly and willfully made false statements for the purpose of obtaining benefits to which she was not entitled. Included with the investigative memorandum were: descriptions of a video tape viewing and witness statements of appellant's physical actions immediately following the incident and five days after the incident, a January 30, 2002 interview with Mr. Salamone and an interview with the detective from the Tacoma Police Department where appellant had filed a complaint that she was the victim of a

³ The Office implied that the incident occurred, but indicated not as alleged by appellant.

criminal assault.⁴ The inspectors stated that appellant's physical actions appeared inconsistent with that of someone who just suffered severe trauma to the same area of a leg, which was still recovering from an earlier surgical procedure. They further noted that appellant had waited over three weeks before notifying the police that she was a victim of a criminal assault, that she had been reluctant to cooperate with the police in their investigation and that her account of the December 26, 2001 injury to the police differed in significant detail from that given in the Form CA-1.⁵ The inspectors further stated that they have not been able to obtain a statement from appellant regarding this matter.

In a March 7, 2002 report, Dr. Wilson reiterated that appellant sustained a fracture of the tibial tubercle of her right knee as a result of the incident which occurred at work on December 26, 2001 when a coworker shoved or moved her foot off a table that it was resting on. He advised that when this happened and her leg began to fall to the floor, she forcefully contracted her quadriceps to catch her knee and that caused the proximal tibial tubercle to avulse off and cause the fracture that occurred of the proximal portion of that tibial tubercle. Dr. Wilson stated that this could occur without her leg being forcefully moved because as she tried to catch it with her quadriceps, the force of the muscle pulling on the proximal portion of the tibial tubercle caused the fracture. He stated that, although appellant was approximately three months postoperative at the time of the incident, there was no internal fixation of that proximal fragment. The incident, therefore, avulsed the proximal fragment of the tibial tuberosity, which had failed to heal with conservative treatment and now required surgical intervention for open reduction internal fixation of that proximal fragment as well as bone grafting to encourage healing. The physician stated that the medial transfer of the tibial tubercle was not adversely affected by the incident as the screws, which were placed at the time of surgery, were not disrupted. Dr. Wilson further stated that, if the December 26, 2001 incident had not occurred, he would have expected that portion of the tibial tubercle to heal satisfactorily, as the distal portion of the tibial tubercle had already healed satisfactorily. He also stated that because the tibial tubercle was osteotomized and moved, it likely was denervated and, therefore, when the fracture occurred, appellant may not have felt much in the way of any pain. Dr. Wilson advised that the chronic pain she has had since was more related to the resultant swelling and then chronic instability and pull of the patellar tendon on this unstable fragment. He further advised that, since the osteotomized fragment was denervated and largely avascular, it would not necessarily cause pain immediately following the fracture. Therefore, the fact that she did not

⁴ In a January 30, 2002 interview with the employing establishment inspectors, Mr. Salamone stated that he was aware that appellant had an injured leg, but did not mean to intimidate her and did not use a threatening tone. In pertinent part, Mr. Salamone stated: "[h]e put his hands underneath the heel of her right foot, touching the foot to support it. [Appellant] made the initial motion to remove her leg and he continued supporting her foot. She had not quite lowered the leg to the floor, when he felt her pull her leg back. He released his hand, as she was in control of moving her leg. She immediately put the leg back on the table's edge, saying it was none of his business where she put her foot. She did not complain he had hurt her leg and she made no sound or action indicating she was in pain." He further indicated that he was interviewed on January 18, 2002 by Tacoma Police Detective Ronald Lewis and had provided Detective Lewis with a copy of his January 3rd statement.

⁵ The January 16, 2002 police report noted that appellant stated: "she was in the breakroom at her work and she had her feet resting on a table. Salamon[e] [sic] came in and told her to take her feet off the table. When she refused, he knocked them off. [Appellant] stated that she put her feet up again and told him not to touch her, but Salamon[e] [sic] knocked them off again."

experience pain immediately after the incident did not mean that the incident did not cause the fracture. Additional progress reports on appellant's condition were provided before and after her April 4, 2002 surgical procedure along with a copy of a June 25, 2002 CAT scan.

In a decision dated January 10, 2003, an Office hearing representative affirmed the February 28, 2002 decision.

LEGAL PRECEDENT

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.⁶ In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁷ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁸ The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.⁹

ANALYSIS

In this case, the Office hearing representative found that on December 26, 2001 Mr. Salamone lifted appellant's right leg from a table with his hands underneath her right foot to support it and when he felt appellant pull her leg back, he gently released her foot back on the table. The Office hearing representative did not accept that Mr. Salamone yanked appellant's leg off the table, grabbed her pants leg or forcefully pushed her leg down. Thus, the Office hearing representative found the evidence insufficient to establish that appellant sustained an injury on December 26, 2001 in the manner she alleged.

The Board has held that an injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *See* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(q).

⁸ *See Lourdes Harris*, 45 ECAB 545 (1994).

⁹ *See Charles E. Evans*, 48 ECAB 692 (1997).

injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements in determining whether a *prima facie* case has been established. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.¹⁰

The Board finds that appellant did not meet her burden to establish that she was injured on December 26, 2001 as a result of a forceful incident concerning her leg in the performance of duty. It is undisputed that the incident occurred between Mr. Salamone and appellant on December 26, 2001. However, the manner of the incident concerning appellant's leg, specifically the forceful nature claimed, is disputed.

The majority of the witness statements support the Office hearing representative's finding that appellant's leg was not moved in the forceful manner alleged by appellant. Although Mr. Ahlman, who was listed as a witness on appellant's Form CA-1, stated that Mr. Salamone yanked appellant's leg off the table, his witness statement is of little probative value as he did not provide any details or a statement describing what he witnessed at the time of the December 26, 2001 incident. Likewise, Ms. Brooks indicated that Mr. Salamone had lifted appellant's leg off the table, but she failed to elaborate on the manner of the lifting. Thus, her statement does not establish that appellant was injured in the manner alleged on her Form CA-1 claim. Ms. McCloskey, who was also seated at appellant's table, indicated that Mr. Salamone lifted appellant's leg slightly, but not forcefully and then gently released her leg back on the table. Mr. Shaw the coworker seated nearby, indicated that he saw Mr. Salamone place appellant's foot on the corner of the table, but that his actions were not rough or violent in nature. These statements support Mr. Salamone's version that the December 26, 2001 incident occurred in a nonforceful manner. Appellant has not offered any other evidence to substantiate her claim that incident of December 26, 2001 occurred in the forceful manner she alleged.¹¹ Further doubt is cast on appellant's claim that the December 26, 2001 incident occurred in a forceful manner by the fact that she filed a police report approximately three weeks after the December 26, 2001 incident and changed her version of the manner in which the incident occurred. In the January 16, 2002 police report, appellant alleged that Mr. Salamone had "knocked" her foot off the table when she refused to take her foot off the table and then had knocked it off again, after she had put her foot back up. Appellant's statement to the police differs in significant detail from her Form CA-1. Moreover, the postal inspectors stated that appellant has refused to cooperate with the investigations of both the employing establishment and the police regarding her charges.

The Board further notes that, although appellant alleged that she was in "extreme right knee pain and [had] muscle spasms with pain over her incision area," the evidence contemporaneous to the incident does not support this contention. The only witness who reported that appellant had complained of pain, was Ms. Brooks. Although Ms. Brooks was seated at appellant's table when the incident occurred, her witness statement is of little probative

¹⁰ *Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002); *Irene St. John*, 50 ECAB 521 (1999).

¹¹ See *Roger Williams*, 52 ECAB 468 (2001) (A claimant must support his or her allegations with probative and reliable evidence.)

value as it is lacking in sufficient details. Additionally, the evidence submitted with the February 8, 2002 investigative memorandum, which contained descriptions of a video tape viewing and witness statements of appellant's physical actions immediately following the incident and five days after the incidents, were noted by the employing establishment inspectors as being inconsistent with that of someone who had very recently suffered severe trauma to the same area of the leg which was still recovering from an earlier surgical procedure.

Thus, although the December 26, 2001 incident is accepted as having occurred, the evidence of record reflects that it happened in a nonforceful manner and not in the manner alluded to by appellant. Although Dr. Wilson, a Board-certified orthopedic surgeon and appellant's attending physician, opined that appellant sustained a fracture of the tibial tubercle of her right knee as a result of the December 26, 2001 incident, he relied upon an inaccurate history of appellant's leg being moved in a forceful manner. In his February 6, 2002 report, Dr. Wilson opined that the fracture most likely occurred when appellant's right leg was "suddenly pushed off a table" and resulted in sudden vigorous contraction of the quadriceps muscle, which avulsed the proximal portion of the tibial tubercle thereby causing the fracture. In his March 7, 2002 report, Dr. Wilson again stated that the fracture occurred when a coworker had shoved or moved her foot off of a table that it was resting on. He related that, when this happened and her leg began to fall to the floor, appellant forcefully contracted her quadriceps to catch her knee, which caused the proximal tibial tubercle to avulse off and thus resulted in the fracture. Medical opinions based on an inaccurate or incomplete history of injury have little probative value.¹² It is noted that the Office advised Dr. Wilson in its January 18, 2002 letter that appellant's foot was not forcefully put on the floor and requested that he respond to a series of questions based on a nonviolent event. He, however, continued to base his opinion on appellant's statement regarding the December 26, 2001 incident. Accordingly, appellant has not submitted sufficient evidence to establish that she sustained an injury due to the nonforceful December 26, 2001 incident.

CONCLUSION

The Board finds that appellant did not meet her burden to establish that she was injured on December 26, 2001 as a result of a nonforceful movement of her leg in the performance of duty.

¹² *Vaheh Mokhtarians*, 51 ECAB 190 (1999).

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member