United States Department of Labor
Employees' Compensation Appeals Board

WILLA M. SULLIVAN, Appellant	)	
and	)	**Docket No. 06-799**
	)	**Issued: June 15, 2006**
DEPARTMENT OF VETERANS AFFAIRS, LONG BEACH VETERANS ADMINISTRATION MEDICAL CENTER, Long Beach, CA, Employer	)	

Appearances:
William S. Ungerman, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 8, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 1, 2005, denying her traumatic injury claim, and nonmerit decision dated January 4, 2006, denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant sustained a traumatic injury while in the performance of duty on May 13, 2005; and (2) whether the Office properly denied her request for merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 16, 2005 appellant, a 62-year-old secretary, filed a traumatic injury claim alleging that, on May 13, 2005, while walking down a hallway to the canteen, she felt a pop in her right knee, causing it to "give way to standing." She did not fall to the floor, due to the assistance of two individuals. Program Manager Jane O'Neill of the employing establishment

controverted the claim, indicating that appellant had told her that she had experienced knee problems while in the military and that, once in a while, one or both of her knees "popped." Appellant also informed Ms. O'Neill that there had been no intervening cause of the alleged May 13, 2005 injury.

On May 23, 2005 the Office informed appellant that the information submitted was insufficient to establish her claim. The Office advised appellant to submit additional evidence explaining her preexisting knee condition, providing information as to any work factor that caused her condition, and a comprehensive medical report discussing the May 13, 2005 incident and providing a diagnosis and rationalized opinion regarding the cause of her diagnosed condition.

Appellant submitted unsigned emergency room progress notes dated May 13, 2005 reflecting that she was seen on that date for treatment of "right knee sprain vs internal joint derangement." Unsigned triage notes dated May 13, 2005 reflect "HPI: fell in hallway at 1500. right knee. Swelling. Other knee has been chronic problem also." Electronically signed progress notes dated May 16, 2005 from Dr. McKinley Cheshire, a treating physician, reflected that appellant was treated for right knee pain and mild swelling. Diagnostic x-ray of appellant's right knee showed no fracture and Dr. Cheshire recommended that she remain off duty with bed rest. On a form dated June 8, 2005, Dr. Harvey Ruslianian, a chiropractor, provided a diagnosis of right knee sprain/strain and opined that appellant was temporarily totally disabled from June 8 through August 8, 2005.

In a June 8, 2005 narrative statement, appellant stated that the form submitted by the emergency room physician was "not stated correctly" and claimed that her knees had "never popped" during her military service and that she did not have a preexisting condition. As she was walking down the hall after leaving the restroom, on May 13, 2005, she "made a left but not a complete turn-around, slipping on something, [she] heard [her] leg give a loud pop." Appellant stated that someone caught her before she fell to the floor and that another individual retrieved a wheelchair for her use. She stated that the pop sounded as if her "leg bones broke in half" and that there were at least three witnesses who heard the sound.

Appellant submitted physicians' notes bearing an illegible signature for the period from January 18 through June 21, 2005. Notes dated May 13, 2005 reflect her report that she had been having "problems with her knees, particularly her right knee -- usually happens with prolonged sitting position." Appellant indicated that she had been holding onto the wall rails and sort of "hopping" along when her knee made a loud "pop" and her leg collapsed. According to the notes, she "stated that she had been on NSC disability for her knees/legs until she got her job at the employing establishment." Appellant denied any tripping, slipping, or sliding prior to the knee popping and giving way.

Appellant submitted a May 13, 2005 radiology report providing an impression of minimal degenerative changes of the right knee joint as well as the femoral patellar joint, but no evidence of fracture or dislocation. She also submitted a June 2, 2005 note from Dr. Clifford Widmark, a Board-certified psychiatrist, who recommended that she be medically excused from

work through June 8, 2005. A May 23, 2005 disability slip bearing an illegible signature indicated that appellant could return to work on May 24, 2005.

On May 13, 2005 Ms. O'Neill stated that appellant had informed her by telephone that on that date, her right knee popped and "gave out" as she was walking to the canteen. Appellant "went on to explain that once in a while her knee does pop." Ms. O'Neill reported that on May 16, 2005, while she was completing the CA-1 form in her office, appellant explained that she had problems with both knees when she was in the military, but that she never filed a claim.

In a June 13, 2005 report, Arthur B. Schuartz, Jr., chief technologist for the employing establishment, stated that, in January 2005, when appellant began working at the employing establishment, he gave her a tour of the facility. At one point, when Mr. Schuartz started to go up a stairwell, appellant informed him that she would have to take the elevator, due to a knee condition she developed while in the military.

By decision dated July 1, 2005, the Office denied appellant's claim on the grounds that the evidence failed to establish that she had sustained an injury under the Federal Employees' Compensation Act.

The evidence of record includes an August 5, 2004 claim for workers' compensation benefits with the state of California, in which appellant described her May 13, 2005 injury as a "slip and fall," claiming that she popped her right knee and sustained injuries to her right leg. The record also contains a September 1, 2005 application for adjudication of claim with the State of California's Workers' Compensation Appeals Board, in which appellant states that she "slipped and fell" at the employing establishment on May 13, 2005.

On October 1, 2005 appellant filed a form requesting reconsideration of the Office's July 1, 2005 decision.

By decision dated January 4, 2006, the Office denied appellant's request for reconsideration, finding that she had neither raised substantive legal questions nor submitted new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

The Act[1] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase sustained while in the performance of duty is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[3]

[1] 5 U.S.C. §§ 8101 *et seq.*

[2] 5 U.S.C. § 8102(a).

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB ___ (Docket No. 04-1257, issued September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of 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 for which compensation is claimed is causally related to the employment injury.[4] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, namely, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.[5] To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[6]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[7] An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[9]

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[4] *Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Tracey P. Spillane*, 54 ECAB 608 (2003); *see also Betty J. Smith*, 54 ECAB 174 (2002). 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(ee).

[6] *See Paul Foster*, 56 ECAB ___ (Docket No. 04-1943, issued December 21, 2004).

[7] *Id. See also Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[8] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[9] *John W. Montoya*, 54 ECAB 306 (2003).

ANALYSIS -- ISSUE 1

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a traumatic injury to her right knee on May 13, 2005.

Appellant noted on her CA-1 form and in her June 8, 2005 personal statement that she injured her right knee while walking down the hall to the canteen. Although she stated that her knee "popped," she presented no evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury. Appellant stated that she did not fall, but that someone caught her before she fell to the floor, and that another individual retrieved a wheelchair for her use. She claimed that at least three witnesses heard the sounds caused by the popping of her knee. However, she provided no witness statements supporting her allegations.

There are inconsistencies in the evidence and in her factual allegations which cast serious doubt on the validity of appellant's claim. In her CA-1, appellant alleged that she felt a pop in her right knee while walking down a hallway. But in her June 8, 2005 narrative statement, she claimed that she "slipped on something" and heard her leg give a loud pop. Alternatively, physicians' notes dated May 13, 2005 reflect appellant's report that she had been holding onto the wall rails and sort of "hopping along" when her knee popped and her leg collapsed. California workers' compensation documents indicated that appellant slipped and fell on the date in question. Appellant has presented at least three different scenarios regarding her alleged May 13, 2005 injury. These inconsistencies support the conclusion that her injury did not occur as alleged.

In *Paul Foster*,[10] appellant filed a claim alleging that he twisted his left knee while delivering mail. Appellant was unable to articulate exactly what he did, or when he did it, that caused the knee pain. Given appellant's vague allegations and the lack of contemporaneous medical evidence supporting appellant's claim that his condition resulted from a twisted knee, the Board found that appellant had failed to establish the fact of injury.[11] In the instant case, appellant's allegations are vague and do not relate with specificity the cause of the injury or how she injured her right knee. She has not provided any evidence that she experienced any single event on May 13, 2005 that caused or contributed to the alleged injury. Accordingly, the Board finds that appellant has failed to establish the fact of injury. Therefore, it is not necessary to discuss the probative value of the medical reports.[12]

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The

[10] *See Paul Foster, supra* note 6.

[11] *Id.*

[12] *Id.*

employee may obtain this relief through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.[13]

The application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[14]

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits.[15] Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[16]

ANALYSIS -- ISSUE 2

In her request for reconsideration, appellant did not make any argument that the Office erroneously applied or interpreted a specific point of law, or advance a legal argument not previously considered by the Office, nor did she submit any relevant and pertinent new evidence not previously reviewed by the Office. Appellant merely filed a form requesting reconsideration of the Office's July 1, 2005 decision. Other documents submitted subsequent to the July 1, 2005 decision included an August 5, 2004 claim for workers' compensation benefits with the state of California and a September 1, 2005 application for adjudication of claim with the State of California's Workers' Compensation Appeals Board. The allegations made by appellant in her state claims for compensation are duplicative of those previously considered by the Office and do not constitute a basis for reopening her case for review of the merits.

The Board finds that appellant did not show that the Office erroneously applied or interpreted a specific point of law, did not raise any substantive legal questions and failed to submit any relevant and pertinent new evidence not previously reviewed by the Office. Accordingly, the Board finds that the Office properly refused to reopen appellant's claim for review on the merits.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury in the performance of duty. The Board further finds that the Office properly denied appellant's request for merit review under 5 U.S.C. § 8128(a).

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[13] 20 C.F.R. § 10.605.

[14] 20 C.F.R. § 10.606.

[15] *Donna L. Shahin*, 55 ECAB ___ (Docket No. 02-1597, issued December 23, 2003).

[16] 20 C.F.R. § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2006 and July 1, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 15, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board