United States Department of Labor
Employees' Compensation Appeals Board

B.V., Appellant	)	
and	)	**Docket No. 06-1382**
	)	**Issued: November 8, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Warren, MI, Employer	)	

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 June 15, 2006 appellant filed a timely appeal from a May 15, 2006 merit decision of the Office of Workers' Compensation Programs denying her claim for a traumatic injury. 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 that she sustained an injury on October 25, 2005 in the performance of duty.

FACTUAL HISTORY

On October 25, 2005 appellant, then a 50-year-old window clerk, filed a claim for a traumatic injury occurring on that date that when she turned to answer the telephone. Her right foot became caught in a camera cord and she fell on her knees and hands. Appellant indicated that her knees and right hand were swollen or had broken blood vessels. She did not stop work.

The employing establishment did not challenge the occurrence of the claimed employment incident.

In a treatment note dated October 28, 2005, Dr. Fabian L. Fregoli, Board-certified in family practice, listed work restrictions of no lifting over 20 pounds or standing over two hours. X-rays of appellant's right wrist, right hand and right and left knees obtained on October 28, 2005 were negative for fracture.

Appellant accepted a limited-duty job offer at the employing establishment on November 1, 2005. In a letter dated December 28, 2005, the employing establishment requested that the Office reopen the claim for the payment of medical bills.

By letter dated April 10, 2006, the Office informed appellant that it had initially accepted her claim for "minor medical treatment" but now needed to formally adjudicate the claim. The Office provided her 30 days to submit a medical report explaining how any diagnosed condition was causally related to the October 25, 2005 employment incident.

Appellant did not respond within the time allotted.

In a decision dated May 15, 2006, the Office denied her claim on the grounds that the evidence was insufficient to establish that the claimed incident occurred as alleged. The Office further found that the medical evidence failed to show that she sustained a medical condition due to her alleged slip and fall on October 25, 2005.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] 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.[3]

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to

[1] 5 U.S.C. §§ 8101-8193.

[2] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Delphyne L. Glover*, 51 ECAB 146 (1999).

establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[5] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[6]

In order to satisfy her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the employment incident caused the alleged injury.[7] 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 employee's alleged injury and the employment incident.[8] The physician's opinion must be based on a complete factual and medical history of the employee, must be of reasonable certainty and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.[9]

ANALYSIS

Appellant alleged that she injured her knees and hands on October 25, 2005 when she tripped and fell on a camera cord. She filed a claim for compensation on that date and sought medical treatment on October 28, 2005. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[10] In this case, the employing establishment did not challenge that the employment incident occurred as alleged and the record contains no inconsistencies in the evidence sufficient to cast doubt on the validity of the claim.[11] The Board finds that appellant has established that she fell on her hands and knees when she tripped over a camera cord on October 25, 2005.[12] The issue, consequently, is whether the medical evidence establishes that she sustained an injury as a result of this incident.

The Board finds that appellant has not established that the October 25, 2005 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.[13] In a treatment note dated October 28, 2005, Dr. Fregoli listed work restrictions of no lifting over 20 pounds or standing over two

[5] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[6] *Id.*

[7] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

[8] *Gary J. Watling*, *supra* note 5.

[9] *See John W. Montoya*, 54 ECAB 306 (2003); *Shirley R. Haywood*, 48 ECAB 404 (1997).

[10] *Caroline Thomas*, *supra* note 2.

[11] *See Betty J. Smith*, 54 ECAB 174 (2002).

[12] The Board further notes that the Office did not request additional information from appellant regarding the factual aspect of her claim in its April 10, 2006 development letter.

[13] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

hours. He did not, however, list findings on examination, provide a diagnosis, or address causation. A physician must provide a narrative description of the employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.[14] Dr. Fregoli's opinion, consequently, is of little probative value.

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.[15] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination, state whether the employment injury caused or aggravated the diagnosed conditions and present medical rationale in support of his or her opinion.[16] Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof to establish that she sustained an injury on October 25, 2005 in the performance of duty.[17]

CONCLUSION

The Board finds that appellant has not established that she sustained an injury on October 25, 2005 in the performance of duty.

[14] *John W. Montoya*, *supra* note 9.

[15] *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

[16] *Calvin E. King*, 51 ECAB 394 (2000).

[17] Subsequent to the Office's May 15, 2006 decision, appellant submitted additional evidence. The Board cannot consider this evidence as its review is limited to the evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant may submit this evidence to the Office and request reconsideration under 5 U.S.C. § 8128.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 15, 2006 is affirmed.

Issued: November 8, 2006
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