United States Department of Labor
Employees" Compensation Appeals Board

N.M., Appellant	)	
and	)	**Docket No. 07-382**
	)	**Issued: April 19, 2007**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, East Boston, MA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 27, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated February 23 and June 29, 2006 which denied her claim for a traumatic injury. She also timely appealed the Office's November 13, 2006 nonmerit decision 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 appellant's claim.

ISSUES

The issues are: (1) whether appellant established that she sustained a traumatic injury in the performance of a duty; and (2) whether the Office properly denied her request for reconsideration.

FACTUAL HISTORY

On June 23, 2005 appellant, then a 58-year-old screening manager, filed a traumatic injury claim alleging that on June 20, 2005 she sustained an injury to her right foot when a camera tripod fell on it. Medical documents were received in the form of emergency department records, radiology report and discharge report. The emergency department record dated June 20, 2005, contained a diagnosis of pain in right toes with status post trauma and was signed by Maureen Walden, a nurse practitioner. In the radiology report, dated June 20, 2005, Dr. James Lawrason, Board-certified in diagnostic radiology, stated that there was no evidence of acute fracture or dislocation. In the June 20, 2005 discharge report, Ms. Walden diagnosed pain in the right toes with status post trauma.

In a December 13, 2005 letter, the Office requested additional information from appellant specifically a physician's opinion containing an explanation as to how the work incident caused the claimed injury.

In a December 19, 2005 letter, appellant provided additional factual information about the work incident.

By February 23, 2006 decision, the Office denied appellant's claim on the grounds that there was no medical evidence as none of the reports were signed by a physician.

In a March 2, 2006 letter, appellant requested reconsideration. Accompanying the request were copies of the radiology report and discharge report. Also submitted was a work note signed by Ms. Walden and a CA-20 form dated March 29, 2006 signed by Dr. John Nagurney, Board-certified in internal medicine, who diagnosed pain in right toes, status post trauma.

By decision dated June 29, 2006, after the Office denied modification of the prior decision on the grounds that the medical notes submitted did not provide a diagnosis.

By appeal request form dated July 13, 2006, appellant requested reconsideration of her case. Subsequent to the request the Office received a letter dated September 28, 2006 from Geoff Allard, insurance recovery analyst from claim assistant. Also submitted was an October 11, 2006 CA-20 form signed by Dr. Nagurney who diagnosed "injury, other, knee, leg, ankle [and] foot."

By November 13, 2006 nonmerit decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of the Act and 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.[1]

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.[2] The second component is whether the employment incident caused a personal injury.[3] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[4]

ANALYSIS -- ISSUE 1

Appellant alleged that she sustained a foot injury on June 20, 2005 in the performance of her duties when a camera tripod fell on her right foot. The Office accepted that the employment incident occurred as alleged. The case depends on whether the employment incident caused a personal injury, specifically whether appellant sustained an injury. The Board holds that the medical evidence does not establish that appellant had a diagnosed condition.

The medical reports submitted failed to provide a diagnosis. The June 20, 2005 emergency report diagnosed "pain in right toes with status post trauma" and was signed by Ms. Walden, a nurse practitioner. A nurse is not a physician under the Act,[5] therefore, the report is of no probative value in regards to the diagnosis. Ms. Walden's factual observations can be considered part of the factual history. However, her observations do not support the finding of an injury as she noted there was "no rash, no lesions of significance" and "no edema [swelling]." In the March 29, 2006 CA-20, Dr. Nagurney diagnosed "pain in right toes, status post trauma." A physician's mere diagnosis of pain does not constitute a basis for payment of compensation.[6]

[1] *Anthony P. Silva*, 55 ECAB 179 (2003).

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id*.

[5] Under 5 U.S.C. § 8101(2), physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

[6] *Robert Broome*, 55 ECAB 0493 (2004).

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulation provides that the application for reconsideration, including all supporting documents, 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.[7]

ANALYSIS -- ISSUE 2

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. The two documents submitted on reconsideration were the September 28, 2006 letter from Mr. Allard and the October 11, 2006 CA-20 form from Dr. Nagurney. Mr. Allard is not a physician under the Act,[8] therefore, his opinion has no probative value and does not constitute relevant new evidence. The October 11, 2006 CA-20 form from Dr. Nagurney diagnosed "injury, other, knee, ankle and foot." This is not a diagnosis as it merely states that there was an injury. The CA-20 form is repetitive as the rest of the information contained in the form is a restatement of previously considered evidence and even states "see medical record sent previously." The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[9]

CONCLUSION

The Board finds that appellant failed to establish that she sustained a traumatic injury in the performance of duty. Additionally, the Office properly denied her request for reconsideration.

[7] 20 C.F.R. § 10.606(b)(2)(iii) (2004).

[8] *See supra* note 5.

[9] *David J. McDonald*, 50 ECAB 185,190 (1998); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

ORDER

IT IS HEREBY ORDERED THAT the November 13, June 29 and February 23, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 19, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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