United States Department of Labor
Employees' Compensation Appeals Board

N.N., Appellant	)	
	)	
and	)	**Docket No. 07-178**
	)	**Issued: March 26, 2007**
U.S. POSTAL SERVICE, GREENS NORTH POST OFFICE, Houston, TX, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 25, 2006 appellant filed a timely appeal from the September 25, 2006 merit decision of the Office of Workers' Compensation Programs which denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an employment-related injury.

FACTUAL HISTORY

On May 24, 2006 appellant, then a 45-year-old letter carrier, filed a Form CA-1, traumatic injury claim, alleging that she was injured that day when she was startled by a spider while sitting in her delivery truck. This caused her to fall from the truck and she alleged that she injured both knees and her right shoulder and developed a neck itch and rash. Appellant stopped work on May 27, 2006.

In support of her claim, appellant submitted reports dated May 26, 2006 in which Dr. Khanh PC Nguyen, a Board-certified internist, noted the history of injury. Findings on examination included full range of motion of the left knee and wrist and limited range of motion of the right shoulder. Dr. Nguyen diagnosed ICD 729.5, pain in limb and advised that appellant should not work for a week and could then return to limited duty for six hours a day. X-rays of the left knee, left hand, wrist and right shoulder on May 26, 2006 revealed no evidence of fracture or dislocation and no other bony abnormalities or soft tissue defects. In reports dated June 2, 2006, Dr. Nguyen noted findings on examination of appellant's right shoulder and left knee. He advised that she could return to work for eight hours a day with restrictions to her physical activity. Dr. Nguyen's work-related diagnosis was status post fall in avoidance of spider. On June 12, 2006 he noted that appellant continued to have pain and difficulty lifting to 90 degrees with the right shoulder and pain in the left knee with ambulation. Dr. Nguyen provided a work-related diagnosis of status post fall of left knee and right shoulder, provided work restrictions and recommended magnetic resonance imaging (MRI) scan. In an MRI scan of the right shoulder dated June 30, 2006, Dr. Brian P. Gay noted a history of injury and severe right shoulder girdle pain with decreased range of motion. The MRI scan demonstrated a full-thickness tear of the anterior supraspinatus tendon and the question of a labral tear. Dr. Gay stated that the "tear likely is related to prior traumatic injury per history." On a June 30, 2006 MRI scan of the right knee he noted a history of patellofemoral joint tenderness and audible crepitation following an accident. The MRI scan demonstrated Class 3 chondromalacia of the patella and a slight lateral patellar subluxation with no tear present. In reports dated July 19, 2006, Dr. Nguyen advised that appellant's work-related diagnosis was slip and fall with pain to the left knee and right rotator cuff tear.

By letter dated August 8, 2006, the Office informed appellant of the evidence needed to develop her claim which was to include a physician's report supported by a medical explanation explaining how the reported work incident caused or aggravated the claimed injury. In an August 10, 2006 attending physician's report, Dr. Nguyen noted a history of a fall on the job because of a spider. His findings were weakness, pain and MRI scans of an anterior supraspinatus tear and patellar subluxation. Dr. Nguyen checked the "yes" box, indicating that the diagnosed conditions were employment related, stating "continued work despite injury." He provided work restrictions of no lifting, bending, reaching, carrying or running and recommended consultation with an orthopedic surgeon.

In a September 25, 2006 decision, the Office denied the claim. The Office found the incident established, but that the medical evidence did not contain a reasoned medical opinion that the condition was caused by the May 24, 2006 employment incident.

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 timely filed within the applicable time limitation period of the Act, that an injury was sustained

[1] 5 U.S.C. §§ 8101-8193.

in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[2]

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.[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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. 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.[4]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[5] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.[6] 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.[7]

ANALYSIS

The Board finds that this case is not in posture for decision. The Office found and the Board agrees that the May 24, 2006 incident occurred. The Board also finds that, while Dr. Nguyen's reports and the MRI scans of Dr. Gay lack detailed medical rationale sufficient to discharge appellant's burden of proof to establish by the weight of reliable, substantial and probative evidence that her right shoulder and left knee conditions were causally related to the May 24, 2006 work incident, this does not mean that they may be completely disregarded by the

[2] *Gary J. Watling*, 52 ECAB 278 (2001).

[3] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004).

[4] *Gary J. Watling, supra* note 2.

[5] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[6] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

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

Office. It merely means that their probative value is diminished. In his reports beginning May 26, 2006, Dr. Nguyen reported a history of injury consistent with the May 24, 2006 employment incident. In reports dated June 2 and 12, 2006, Dr. Nguyen noted appellant's continued complaints of pain in the right shoulder and left knee and ordered MRI scans. In his June 30, 2006 MRI scan of the right shoulder, Dr. Gay advised that the tear was likely related to a prior traumatic injury. By reports dated July 19, 2006, Dr. Nguyen advised that appellant's work-related diagnoses were slip and fall with pain to the left knee and a right rotator cuff tear and in an attending physician's report dated August 10, 2006 noted a history of a fall at work caused by a spider and examination findings of weakness and pain. He advised that an MRI scan demonstrated an anterior supraspinatus tear and patellar subluxation and checked the "yes" box, indicating that the diagnosed conditions were employment related, stating "continued work despite injury."

The medical evidence in this case supports that appellant sustained an injury to her left knee and right shoulder on May 24, 2006. In the absence of medical evidence to the contrary, Dr. Nguyen's reports, as supported by Dr. Gay's MRI scans, are sufficient to establish a *prima facie* case such that the Office should further develop the record to determine if the diagnosed conditions of appellant's left knee and right shoulder were caused by her federal employment.[8]

It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[9] The case will be remanded to the Office to further develop the medical evidence to determine if appellant's diagnosed left knee and right shoulder conditions were caused or aggravated by the May 24, 2006 employment incident and, if so, whether appellant had any disability there from.[10] After this and such further development deemed necessary, the Office shall issue an appropriate decision.[11]

[8] *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *See Jimmy A. Hammons, id.*

[10] Under the Act, the term "disability" means the incapacity because of an employment injury, to earn the wages that the employee was receiving at the time of injury. Disability is thus, not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in the Act. *Cheryl L. Decavitch*, 50 ECAB 397 (1999). Furthermore, whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative and substantial medical evidence. *Fereidoon Kharabi*, 52 ECAB 291 (2001).

[11] The Board notes that appellant submitted medical evidence with her appeal. The Board cannot consider this evidence, however, as its review of the record is limited to the evidence of record which was before the Office at the time it rendered its September 25, 2006 decision. 20 C.F.R. § 501.2(c); *see Robert Henry*, 54 ECAB 776 (2003). Appellant, however, retains the right to submit this evidence to the Office with a valid request for reconsideration. *See* 20 C.F.R. §§ 10.605-10.610; *James A. Castagno*, 53 ECAB 782 (2002).

CONCLUSION

The Board finds this case is not in posture for decision regarding whether appellant's left knee and right shoulder conditions were caused by the May 24, 2006 work incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 25, 2006 be vacated and the case remanded to the Office for further proceedings consistent with this opinion of the Board.

Issued: March 26, 2007
Washington, DC

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

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

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