United States Department of Labor
Employees' Compensation Appeals Board

D.V., Appellant	)	
and	)	**Docket No. 07-1741**
	)	**Issued: November 23, 2007**
DEPARTMENT OF VETERANS AFFAIRS, HEALTH ADMINISTRATION CENTER, Denver, CO, 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 June 19, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated May 29, 2007 finding that she had not established an injury causally related to her federal employment. 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 met her burden of proof in establishing that she sustained a right eye condition in the performance of duty.

FACTUAL HISTORY

On November 22, 2006 appellant, then a 38-year-old program analyst, filed a traumatic injury alleging on November 20, 2006, while sitting at her desk, something fell from the ceiling into her right eye. She sought aid from coworkers, Elain Neloms and Paradise Stewart, who were unable to remove the foreign body from her eye. Appellant sought treatment at a local

emergency room. Ms. Neloms completed a witness statement noting that appellant asked her to examine her eye, her eye was red and swollen and that she attempted to blow into appellant's eye to remove the foreign body. She noted that Ms. Stewart tried to flush appellant's eye with eyeclear. In an additional statement, appellant noted that something fell in her eye on November 20, 2006. She sought treatment from the local emergency room and was diagnosed with a cornea scratch, treated with antibiotics and eye drops and released. Appellant consulted with her optometrist on November 27, 2006 who stated that her eye was inflamed and ridged and prescribed additional eye drops. She returned on November 29, 2006 and the optometrist could not identify the cause of her discomfort. Appellant sought treatment from a different physician on December 8, 2006.

Appellant submitted instructions regarding care of her right eye corneal abrasion on November 20, 2006 from the North Suburban Medical Center.[1] Dr. Kurt Kuskie, an optometrist, completed a form report on November 27, 2006 and listed appellant's date of injury as November 21, 2006. He stated that appellant had a foreign body sensation in her right eye and that she removed the foreign body the morning of November 27, 2006. Dr. Kuskie diagnosed a keritits and stated that no foreign body was found in appellant's eye. He indicated with a checkmark "no" that appellant's condition was not caused or aggravated by an employment activity.

In a report dated January 8, 2007, Dr. James Weingart, a Board-certified family practitioner, stated that he examined appellant on December 14, 2006 and diagnosed a hordeolum in her left upper eyelid. He noted appellant's history of a foreign body in her eye and prior diagnosis of corneal abrasion. Dr. Weingart prescribed medication. Appellant returned to the doctor's office on December 28, 2006 and received an additional prescription and referral to an additional ophthalmologist.

In a note dated February 16, 2007, Dr. William G. Self, Jr., a Board-certified ophthalmologist, noted a bump under appellant's left upper eyelid. He noted that appellant's visual acuity was normal for her and stated that she had not worn her contact lens since the bump started.

The Office requested additional factual and medical evidence regarding appellant's claim on April 24, 2007. The Office allowed 30 days for a response. In a report dated February 14, 2007, Dr. Weingart clarified his January 8, 2007 report noting that appellant's original injury was to her right eye and that she subsequently developed problems in her left eye.

Appellant completed a claim for compensation for leave without pay usage from January 19 to May 12, 2007. Dr. Self completed an additional report on May 24, 2007 and diagnosed a chalazion in the middle third of the left upper lid. He stated: "This is a lesion that comes from a variety of different reasons but most often that could not be discerned. I do not think this is related to any kind of industrial or work-related situation."

[1] These instructions were not signed by a physician.

By decision dated May 29, 2007, the Office denied appellant's claim for right eye injury. The Office stated that appellant had not submitted sufficient medical evidence to establish that her right eye condition resulted from the accepted work events on November 20, 2006.

LEGAL PRECEDENT

The Office's regulations 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[2] 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. The second component is whether the employment incident caused a personal injury. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[3] This medical opinion must be based upon a complete factual and medical background with an accurate history of appellant's employment injury. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[4]

ANALYSIS

The Office accepted that appellant sustained the employment incident alleged at the time, place and in the manner alleged. However, it found that appellant had not submitted the necessary medical opinion evidence to establish a medical condition arising from this employment incident. The Board finds that appellant has not submitted probative medical evidence to establish that the employment incident on November 20, 2006 caused any personal injury.

The Office advised appellant of the evidence required to establish her claim, however, appellant failed to submit such evidence. Appellant submitted emergency room discharge instructions regarding a corneal scratch of her eye, however, these instructions were not signed by a physician. It is well established that, to constitute competent medical opinion evidence, the medical evidence submitted must be signed by a qualified physician.[5] As these instructions were not signed, there is no medical diagnosis of a corneal scratch.

[2] 20 C.F.R. § 10.5(ee).

[3] *Steven S. Saleh*, 55 ECAB 169, 171-72 (2003).

[4] *James Mack*, 43 ECAB 321, 328-29 (1991).

[5] *Vickey C. Randall*, 51 ECAB 357, 360 (2000); *Arnold A. Alley*, 44 ECAB 912, 921 (1993). *Merton J. Sills*, 39 ECAB 572, 575 (1988).

Appellant submitted a November 27, 2006 form report from Dr. Kuskie, an optometrist, diagnosing kerititis of the right eye and indicating that this condition was not due to her employment. Dr. Weingart, a Board-certified family practitioner, and Dr. Self, a Board-certified ophthalmologist, diagnosed left eye conditions. Dr. Self indicated in his May 24, 2007 report that appellant's left eye condition was not employment related. The medical evidence of record negates appellant's claim for an employment-related eye condition. Appellant has failed to submit any probative medical evidence establishing that she sustained an injury in the performance of duty and the Office properly denied appellant's claim for compensation.[6]

CONCLUSION

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that she sustained an eye condition as a result of her November 20, 2006 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 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

[6] *J.Z.* 58 ECAB ___ (Docket No. 07-531, issued May 11, 2007).