United States Department of Labor
Employees' Compensation Appeals Board

L.W., Appellant	)	
and	)	**Docket No. 07-1850**
	)	**Issued: November 21, 2007**
DEPARTMENT OF THE ARMY, ARMY MEDICAL COMMAND, Fort Bragg, NC, Employer	)	

Appearances:
Lucille H. Williams, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 23, 2006 appellant filed a timely appeal from the September 27, 2006 merit decision of the Office of Workers' Compensation Programs denying her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2 and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a right knee injury while in the performance of duty on July 28, 2006.

FACTUAL HISTORY

On July 28, 2006 appellant, a 60-year-old nursing assistant, filed a traumatic injury claim alleging that she fell on that date on a "shining floor," while walking down a hall with charts. A witness, Captain Caulk, confirmed that appellant fell in the clinic's hallway as she was carrying charts to the "mod" office on July 28, 2006. In an undated statement, appellant alleged that, a coworker, Sallie Underwood had falsely indicated that on the date in question, appellant caught

her toe on the floor and fell to her knees. She stated that Ms. Underwood was not present at the time of the incident and that her shoe never came off.

In a letter dated August 24, 2006, the Office informed appellant that the employing establishment had controverted her claim on the grounds that appellant fell because she was wearing oversized shoes. It advised her that the information submitted was insufficient to establish her claim and allowed her 30 days to submit additional information, including a detailed account of the alleged injury and a physician's report with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

Appellant submitted a July 28, 2006 work excuse bearing an illegible signature, indicating that she could return to work on July 31, 2006. July 28, 2006 emergency room care discharge instructions, bearing an illegible signature of a physician's assistant, provided a diagnosis of right knee contusion. Notes indicated "right knee pain -- hit on floor."

In an undated statement, appellant indicated that on the date in question, she slipped on a "slippery and shining floor" as she was heading for "mod." She noted that Captain Caulk helped her to a chair and a Mrs. Williams provided her with an ice pack. In a July 28, 2006 authorization for treatment, Sonia Shaw, a registered nurse, related appellant's account of the alleged incident. She reported that appellant was walking down C hallway, on her way to the "mod" office when she caught her toe on the floor and fell to her knees. Appellant was helped to a chair and an ice pack was applied to her knee.

A July 28, 2006 attending physician's report, bearing an illegible signature indicated that appellant "slipped when at work -- fell on right knee." In response to the question as to whether the physician believed that appellant's condition was caused by employment factors, the form contained a checkmark in the "yes" box.

In an August 23, 2006 report, Dr. S.J. Patel, a treating physician, stated that he had examined appellant on August 21, 2006 for right leg pain. He related that she was seen at Womack Clark Clinic on July 28, 2006; that she returned to work on July 31, 2006, but was unable to remain because appellant was not feeling well; and that she returned to work on August 1, 2006. The record contains an August 24, 2006 return-to-work slip, signed by Patsy Willis, a receptionist for Cape Fear Valley Internal Medicine, stating that appellant could return to work on that date.

By decision dated September 27, 2006, the Office denied appellant's claim. It accepted that the work event occurred as alleged but found that the medical evidence did not contain a diagnosis that could be connected to the accepted event. Therefore, the evidence to establish that appellant had sustained an injury under the Federal Employees' Compensation Act on July 28, 2006.[1]

[1] The Board notes that appellant submitted additional evidence after the Office rendered its September 27, 2006 decision. Its jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Therefore, this new evidence cannot be considered by the Board on appeal. Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

LEGAL PRECEDENT

The Act 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]

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, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[5]

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.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] 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] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under the Act.[9]

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[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 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Robert Broome*, 55 ECAB 339 (2004).

[5] *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q)(ee).

[6] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

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

[8] *Id.*

[9] 20 C.F.R. § 10.303(a).

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.[10]

ANALYSIS

The Office accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the July 28, 2006 workplace incident occurred as alleged. The issue, therefore, is whether appellant has submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence of record does not contain a rationalized medical opinion establishing that the work-related incident caused or aggravated her right knee injury or disability. Therefore, appellant has failed to satisfy her burden of proof.

Medical evidence submitted by appellant consists of a July 28, 2006 work excuse bearing an illegible signature; July 28, 2006 emergency room discharge instructions, bearing an illegible signature of a physician's assistant; a July 28, 2006 treatment authorization, signed by a registered nurse; an August 24, 2006 return-to-work slip, signed by a receptionist; and an August 23, 2006 report from Dr. Patel. None of these reports constitute probative medical evidence.

On August 23, 2006 Dr. Patel stated that he had examined appellant on August 21, 2006 for right leg pain. He related that she was seen at Womack Clark Clinic on July 28, 2006; that she returned to work on July 31, 2006, but was unable to remain because she was not feeling well; and that she returned to work on August 1, 2006. Dr. Patel did not provide a definitive diagnosis or render an opinion as to the cause of appellant's condition.[11] The Board has long held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. The record does not contain an opinion by Dr. Patel or by any other qualified physician, supporting appellant's contention that her right knee condition was causally related to the accepted employment activity. While appellant has submitted chart notes and other medical documents which track her treatment, she has not provided a narrative report containing a physician's rationalized opinion on whether there is a causal relationship between her condition and the established July 28, 2006 work incident. The Board notes that appellant submitted notes and reports signed by nurses, physicians' assistants and receptionists. As these reports were not signed by individuals that qualify as "physicians" under the Act, the Board finds that they do not constitute probative

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

[11] The Board has held that a diagnosis of pain does not constitute a basis of payment for compensation, as pain is considered to be a symptom rather than a specific diagnosis. *Robert Broom*, *supra* note 4.

medical evidence.[12] The unidentified reports bearing illegible signatures also lack probative value in that they lack proper identification.[13]

Appellant expressed her belief that her right knee condition resulted from the July 28, 2006 employment incident. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[14] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[15] Causal relationship must be substantiated by reasoned medical opinion evidence which it is appellant's responsibility to submit. Therefore, appellant's belief that her condition was caused by the work-related incident is not determinative.

The Office advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to the Office's request. As there is no probative, rationalized medical evidence addressing how appellant's claimed knee condition was caused or aggravated by her employment, she has not met her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her federal employment.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on July 28, 2006.

[12] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[13] *See Merton J. Sills, supra* note 12.

[14] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[15] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 27, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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