United States Department of Labor
Employees' Compensation Appeals Board

M.J., Appellant	)	
and	)	**Docket No. 08-226**
	)	**Issued: April 24, 2008**
DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Baltimore, MD, Employer	)	

Appearances:
Milo G. Martin, Jr., for the appellant
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 October 30, 2007 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated May 7, 2007 which denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an employment-related injury on October 30, 2006.

FACTUAL HISTORY

On November 9, 2006 appellant, then a 50-year-old insurance specialist, filed a Form CA-1, traumatic injury claim, alleging that on October 30, 2006 she injured her right ankle when

she stepped on a pen at work and heard her ankle pop. She immediately informed Faith Smith, a manager, about the incident. Appellant stopped work on November 3, 2006.[1]

In support of her claim, appellant submitted a March 7, 2007 report in which Dr. Clifford L. Jeng, a Board-certified orthopedic surgeon, noted a history of a work injury in October 2006 when she stepped on a pen and felt her ankle pop with increased pain. Dr. Jeng noted her diagnosis of ankle sprain and that she was wearing an ankle brace. Physical findings included tenderness to palpation in the anterolateral leg with a nodule present and pain to the anterolateral ankle with mild sinus tarsi pain. Ankle, subtalar and transverse tarsal motion was equal bilaterally with intact sensation to light touch. Dr. Jeng advised that x-rays of the right foot and ankle demonstrated no fracture or dislocation and arthritis at the ankle. He diagnosed peroneal tear versus tendinitis and recommended magnetic resonance imaging (MRI). Dr. Jeng advised that appellant could not work until the MRI scan was done.

By letter dated March 28, 2007, the Office informed appellant of the type of evidence needed to support her claim. In an undated statement, appellant reported that on October 30, 2006 while walking from the printer to the fax machine, she stepped on a pen or pencil. She then bent down to pick it up and upon taking the next step, felt something in her ankle pop and felt pain. Appellant stated that, when the pain and swelling worsened, on November 5, 2006, she went to the emergency room where she was placed in an ankle brace and diagnosed with ankle sprain but returned to work with her foot on a pillow. She submitted an emergency room report dated November 5, 2006 in which Dr. Michael D. Witting, Board-certified in emergency medicine, noted a history of pain and swelling in the right foot with a history that she felt it pop and remembered twisting it while going down stairs. Physical examination demonstrated mild swelling and pain in the talofibular area of the right ankle and he stated that x-ray was remarkable for an apparent chip fracture off the distal fibula. Dr. Witting's impression was closed fracture of the right ankle, avulsion type. Appellant was given a brace and advised to minimize weight bearing. Right ankle x-rays dated November 5, 2006 demonstrated no fracture or dislocation. A November 9, 2006 x-ray was interpreted as showing a very tiny bony density at the top of the medial malleolus that could represent a small avulsion fracture, and November 30, 2006 films were read as showing no fracture with some spurring at the inferior margin of the medial malleolus. On April 15, 2007 she submitted a Form CA-7, claim for compensation, for March 23, 2007.

By decision dated May 7, 2007, the Office denied the claim, finding that the evidence was insufficient to establish that the event occurred as alleged and that no medical evidence provided a diagnosis that could be connected to the claimed event.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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

[1] The record indicates that this was initially considered a short form closure claim.

[2] 5 U.S.C. §§ 8101-8193.

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 and/or specific condition for which compensation is claimed are 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.[3]

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.[4] 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.[5]

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] 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.[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 causal relationship.[8]

ANALYSIS

The Board finds that the October 30, 2006 incident occurred. Appellant was consistent in her description of the incident and immediately notified an employing establishment manager on October 30, 2006. Although Dr. Witting reported a different history of injury, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great

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

[4] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *Gary J. Watling, supra* note 3.

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

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

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

probative value and will stand unless refuted by strong and persuasive evidence.[9] In this case, the Board finds the evidence on the claim form that appellant reported the October 30, 2006 incident to an employing establishment manager more persuasive. Appellant, however, failed to meet her burden of proof to establish that she sustained an injury caused by this incident. The medical evidence of record includes Dr. Witting's emergency room report dated November 5, 2006 and Dr. Jeng's March 7, 2007 report. While Dr. Witting and Dr. Jeng noted physical findings and diagnosed an ankle injury, neither provided an opinion regarding the cause of the diagnosed condition, and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[10] Likewise, the x-ray studies did not include an opinion regarding the cause of any diagnosed condition.[11]

To meet his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.[12] The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[13] Appellant submitted no such evidence in this case and thus did not establish the critical element of causal relationship. She therefore did not meet her burden of proof to establish that she sustained an injury on October 30, 2006.[14]

CONCLUSION

The Board finds that, while appellant met her burden of proof to establish that she sustained an employment incident on October 30, 2006, she did not meet her burden of proof to establish that she sustained an injury causally related to this incident.[15]

[9] *Allen C. Hundley*, 53 ECAB 551 (2002).

[10] *Willie M. Miller*, 53 ECAB 697 (2002).

[11] *Id*.

[12] *Gary J. Watling, supra* note 3.

[13] *Patricia J. Glenn*, 53 ECAB 159 (2001).

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

[15] The Board notes that appellant submitted evidence to the Office subsequent to the May 7, 2007 decision and with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the record is limited to the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 7, 2007 be affirmed, as modified.

Issued: April 24, 2008
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