

**United States Department of Labor
Employees' Compensation Appeals Board**

N.B., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Cleveland, OH, Employer)

**Docket No. 08-364
Issued: June 4, 2008**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 15, 2007 appellant filed a timely appeal from an August 9, 2007 merit decision of the Office of Workers' Compensation Programs that denied her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a traumatic injury on June 5, 2007.

FACTUAL HISTORY

On June 27, 2007 appellant, then a 32-year-old mail handler, filed a traumatic injury claim alleging that she scraped her leg in the performance of duty on June 5, 2007. She nicked her shin on a latch while transporting mail to the loading dock. Appellant explained that she had previously nicked herself at work and her scrapes had always resolved within a few hours. She expected her June 5, 2007 injury to resolve similarly, but when she awoke that evening to go

back to work, she fell to her knees and had to take a pill for her pain. Appellant stopped work on June 7, 2007 and did not return. The employing establishment controverted the claim. On May 30, 2007 it had advised appellant that her employment would be terminated effective July 10, 2007, due to excessive absences.

On June 7, 2007 Dr. George Bernstein, a Board-certified emergency medicine specialist, advised that appellant would be unable to work between June 7 and 10, 2007. A hospital discharge note dated June 7, 2007 advised appellant that she had a skin infection and that infections may develop on their own or may be caused by injuries such as cuts or insect stings. On June 22, 2007 Dr. Wen-An Lin, a Board-certified internist, advised that appellant was unable to work between June 22 and 26, 2007.

In a June 27, 2007 statement, Kenneth Trusnick, appellant's supervisor, advised that appellant did not immediately report her claimed injury and there were no witnesses.

By correspondence dated July 9, 2007, the Office requested additional information concerning appellant's traumatic injury claim.

In a July 11, 2007 note, Dr. Barbara Marshall, a podiatrist, diagnosed stage three ulcer with cellulitis of the right leg. She noted that appellant's injury occurred on June 5, 2007, and advised that appellant would be unable to work until July 19, 2007. On July 26, 2007 Dr. Marshall stated that appellant would be able to return to work without restrictions on July 30, 2007.

By decision dated August 9, 2007, the Office denied appellant's traumatic injury claim on the grounds that the medical evidence of record was insufficient to establish a causal relationship between appellant's diagnosed condition and the June 5, 2007 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 in the performance of duty as alleged, and that any specific conditions or disabilities for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁶ The opinion of the physician must be based on a complete factual and medical background of the claimant⁷ and must be one of reasonable medical certainty⁸ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

The Office accepted that appellant experienced the June 5, 2007 incident as alleged. However, it found that the medical evidence of record was insufficient to support a causal relationship between appellant's diagnosed condition and the accepted employment incident. The Board finds that appellant has not met her burden of proof in establishing that the incident which occurred on June 5, 2007 caused a personal injury.¹⁰

Appellant provided hospital notes from Dr. Bernstein and Dr. Lin. In a June 7, 2007 note, Dr. Bernstein stated that appellant would be unable to work between June 7 and 10, 2007. However, he did not discuss the etiology of appellant's condition, provide a diagnosis, or relate it to appellant's work. The Board has held that a medical report which does not offer a detailed opinion on causal relationship is of limited probative value on that issue.¹¹ Similarly, on June 22, 2007 Dr. Lin advised that appellant would be unable to work between June 22 and 26, 2007, but did not offer an opinion on causal relationship, note a diagnosis, or explain the etiology

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.*

⁶ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *John W. Montoya*, 54 ECAB 306 (2003).

⁹ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹⁰ After the Office's final decision, appellant submitted additional medical evidence. The Board, however, notes that it cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

¹¹ *See A.D.*, 58 ECAB ____ (Docket No. 06-1183, issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

of appellant's condition. The Board finds that neither Dr. Bernstein's nor Dr. Lin's report established that the June 5, 2007 employment incident caused a diagnosed condition.

Appellant also submitted two notes from Dr. Marshall. On July 11, 2007 she diagnosed stage three ulcer with cellulitis of the right leg and stated that appellant's injury occurred on June 5, 2007. However, Dr. Marshall did not indicate whether the injury happened at work or elsewhere on that date and did not describe how the incident of nicking her leg on a latch at work would have caused the diagnosed condition. The Board finds that without additional explanation and rationale,¹² her statement that appellant's injury occurred on June 5, 2007 is insufficient to establish that appellant experienced a work injury which directly caused her diagnosed condition. On July 26, 2007 Dr. Marshall stated that appellant would be able to return to work on July 30, 2007, but did not address the causation of appellant's injury. As noted above, a medical report that does not include an opinion on causal relationship is insufficient to establish a claim for traumatic injury.

Appellant submitted no other medical evidence from a physician in support of her claim. She provided a June 7, 2007 hospital discharge note and information sheet stating that she had a skin infection but this was not signed by a physician and did not address the cause of the skin infection. As the June 7, 2007 discharge note is of general application and not signed by a physician, it is not competent medical evidence and is no evidentiary value in determining specific medical issues in appellant's claim.¹³

The Board finds that appellant has not submitted medical evidence establishing that the June 5, 2007 employment incident caused or aggravated a particular medical condition.

CONCLUSION

The Board finds that appellant has not met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty.

¹² See *supra* note 10.

¹³ See *Vickey C. Randall*, 51 ECAB 357 (2000) (to constitute competent medical opinion evidence, the medical evidence submitted must be signed by a qualified physician); see also *William C. Bush*, 40 ECAB 1064, 1075 (1989) (evidence of general application such as excerpts from publications are no evidentiary value in determining specific medical issues involving the claimant).

ORDER

IT IS HEREBY ORDERED THAT the August 9, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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