United States Department of Labor
Employees' Compensation Appeals Board

S.V., Appellant	)	
and	)	**Docket No. 08-146**
	)	**Issued: May 12, 2008**
U.S. POSTAL SERVICE, BULK MAIL FACILITY, Denver, CO, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 22, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 21, 2007, affirming the denial of her claim for compensation. 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 established an injury in the performance of duty on December 13, 2006.

FACTUAL HISTORY

On December 22, 2006 appellant, then a 44-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries in the performance of duty on December 13, 2006. She stated she was trying to release mail that had become stuck in a chute and she fell backwards, hitting her head and losing consciousness. Appellant described the injuries as a concussion, headache, left arm bruise, neck and back pain, along with runny eyes.

In a statement dated January 17, 2007, an employing establishment supervisor, Mr. Rainwater, reported that on December 13, 2006 appellant told him "she had fallen backward on the keying station and landed on her buttocks/side." He stated that appellant explained that she was trying to free a parcel with a bar, and as the parcel broke free she stumbled and fell. Mr. Rainwater reported that appellant was a little shaken up from the fall, but declined medical attention. According to him, appellant did not mention that she hit her head or lost consciousness. Mr. Rainwater stated that appellant joked that it was a good thing she landed on her buttocks.

With respect to the medical evidence, the record indicates that appellant initially sought treatment on December 20, 2006 at a hospital emergency room. The history indicated that an accident occurred four days earlier and appellant reported that she fell and landed on a hard surface. The diagnosis from Dr. Paul Price, an emergency medicine specialist, was concussion with loss of consciousness, and neck sprain/strain. On December 22, 2006 appellant was treated at a hospital emergency room by Dr. Catherine Erickson, an internist. There was a history that appellant fell backward and hit a wall at work a week earlier after pulling boxes down. The diagnosis was neck strain and postconcussion syndrome.

Appellant received additional treatment at an emergency room on January 7, 2007, with a date of injury reported as December 19, 2006. The physician diagnosed status post closed-head injury with intermittent memory loss. In a form report (CA-20), an internist, whose signature is illegible, diagnosed transient amnesia. The physician checked a box "yes" the condition was caused or aggravated by employment activity.

By decision dated February 28, 2007, the Office denied the claim for compensation. The Office determined that the evidence was insufficient to establish an incident as alleged as there were inconsistencies in the evidence.

Appellant requested an oral hearing before an Office hearing representative, which was held on June 22, 2007. At the hearing, she stated that she believed she hit her head on the wall as she fell, and there was a bump on the back of her head. Appellant denied saying she did not want medical attention or joking about falling on her buttocks.

In a report dated January 8, 2007, Dr. Lorena Letkomiller, an internist, provided a history of a head injury on December 19, 2006 when appellant lost consciousness for an unknown period. The history also reported "[status post] occipital injury from box hitting her in the front of the head and resultant hit to the occipital region after fall onto machine." Dr. Letkomiller provided results on examination and diagnosed concussion and transient amnesia.

By decision dated September 21, 2007, the Office hearing representative affirmed the February 28, 2007 decision. The hearing representative found that appellant did fall at work, but appeared to find that she did not hit her head. The hearing representative also found the medical evidence was insufficient to establish an injury causally related to a December 13, 2006 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that he or she sustained an injury while in the performance of duty.[2] In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[3]

The Office's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[4] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[5]

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS

With regard to the first element of fact of injury, the record does establish that on December 13, 2006 appellant was attempting to dislodge a parcel and she lost her balance and fell. Appellant reported the incident promptly to a supervisor on that date. The exact manner of the fall is not entirely clear from the record. Appellant believed she hit her head on a wall as she fell and lost consciousness for an unspecified period. There were no eyewitnesses and a

[1] 5 U.S.C. §§ 8101-8193.

[2] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[3] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

[5] *Id.*

[6] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

supervisor stated that appellant's initial description of the incident did not include hitting her head. Appellant's statement is entitled to great weight on this factual issue[7] and she did report hitting her head on a wall when she sought treatment on December 20, 2006. According to the supervisor, appellant was attempting to minimize the severity of the fall and the need for immediate treatment, and therefore the lack of a complete description of the incident to the supervisor is not persuasive evidence that she did not hit her head. The record is sufficient to establish an employment incident as alleged on December 13, 2006, and therefore the medical evidence will be reviewed to determine if an injury causally related to the employment incident.

As noted above, probative medical evidence must be based on a complete factual and medical background. In this case a proper history of the incident would include a clear description of the incident, the date it occurred, as well as an understanding that appellant did not initially report a head injury or seek treatment until December 20, 2006. None of the medical evidence of record contains a complete and accurate history of the December 13, 2006 employment incident. The emergency room reports provide a brief reference to a fall at work, without providing a complete and accurate background. Dr. Letkomiller appeared to have an incorrect history as she referred to a box hitting appellant's head and a fall into a machine.

In addition to the lack of a complete factual and medical background, the medical evidence lacks a rationalized medical opinion on causal relationship between a diagnosed condition and the December 13, 2006 employment incident. The diagnoses in this case include a neck sprain, as well as closed-head injury, postconcussion syndrome and transient amnesia. To establish any of these conditions as employment related there must be a medical opinion on causal relationship with supporting medical rationale. The physicians of record do not provide a medical opinion on causal relationship between a specific diagnosed condition and the employment incident, with an explanation supporting the opinion. The checking of a box "yes" in a form report with respect to a transient amnesia, without additional explanation or rationale, is not sufficient to establish causal relationship.[8]

The Board accordingly finds that appellant did not meet her burden of proof in this case. The record does not contain probative medical evidence on causal relationship between any diagnosed condition and the December 13, 2006 employment incident.

CONCLUSION

The evidence of record does not establish an injury causally related to a December 13, 2006 employment incident.

[7] An employee's statement regarding an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence. *Thelma Rogers*, 42 ECAB 866 (1991).

[8] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 21 and February 28, 2007 are modified to reflect that an employment incident occurred as alleged, and affirmed as modified.

Issued: May 12, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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