United States Department of Labor
Employees' Compensation Appeals Board

E.C., Appellant	)	
	)	
and	)	**Docket No. 08-259**
	)	**Issued: May 7, 2008**
DEPARTMENT OF THE TREASURY,	)	
INTERNAL REVENUE SERVICE,	)	
Morton Grove, IL, Employer	)	
	)	

Appearances:
Appellant, pro se
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 November 7, 2007 appellant filed a timely appeal from the October 23, 2007 merit decision of the Office of Workers' Compensation Programs, which denied her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant's May 9, 2006 work incident caused an injury.

FACTUAL HISTORY

On the prior appeal,[1] the Board noted that appellant, a 58-year-old automation clerk, filed a claim alleging that she sustained an injury in the performance of duty on May 9, 2006, when she tripped in the atrium of her building and fell face down on the floor, badly bruising her left

[1] Docket No. 07-697 (issued June 26, 2007).

ribs and hand. The Office denied her claim on the grounds that injury did not occur in the performance of duty because it occurred 15 minutes after her tour of duty had ended and she had already left the building and was reentering the building when she fell. The Board found that the case was not in posture for decision. The Board noted that an injury is considered to have arisen in the course of employment if it occurred: (1) on the premises; (2) a reasonable interval after official working hours; and (3) while the employee was leaving work or engaged in preparatory or incidental acts. As leaving the building did not necessarily mean appellant left the premises, the Board remanded the case for a diagram of the building and surrounding property and a statement from appellant clarifying exactly where she traveled from the time she left the building to the time she reentered and how long this took. The facts of this case as set forth in the Board's prior decision are hereby incorporated by reference.

The Office obtained a diagram of the floor plan from the employing establishment. Appellant submitted a description of her route outside the building.

Appellant's record also contains medical evidence. On May 10, 2006 Dr. Paul Helman, a specialist in internal medicine, stated: "Due to trauma from fall yesterday I advise [appellant] to not return to work until May 12, 2006." A May 19, 2006 progress note described appellant's complaints and showed diagnoses of multiple contusions and joint pain, left leg. A May 15, 2006 hospital bill for therapeutic exercises showed an admission date of August 15, 2005. A December 5, 2006 attending physician's form report from Dr. Howard Freedberg, an orthopedic surgeon, indicated that on November 8, 2006 appellant was at work walking early in the morning when she stumbled and felt pain in her left ankle. He noted a prior left foot injury on February 25, 2005. Dr. Freedberg diagnosed left leg radiculopathy and indicated that this was caused or aggravated by the employment activity on November 8, 2006 and a December 5, 2006 authorization request for durable medical equipment indicated that appellant had a diagnosis of left foot, ankle, leg and low back pain and needed a wheelchair for mobility assistance.

In a decision dated October 23, 2007, the Office denied appellant's claim for compensation. The Office found that appellant was on the premises of the employing establishment, within a reasonable interval after work and was leaving for the day. She was therefore considered to be in the performance of duty. The Office observed, however, that appellant submitted no medical opinion to support that the claimed medical condition was causally related to the accepted work incident:

> "The file is devoid of the ER [emergency room] records and diagnostic tests from your initial visit of May 10, 2006. Your physician has failed to provide a discussion of the complete history of injury along with objective findings upon examination to support the diagnosed condition, failed to provide diagnostic test results, failed to provide a rationalized opinion explaining whether and how the diagnosed condition is related to the fall of May 9, 2006 and not your preexisting condition, or previous work-related injuries, or any injuries after the incident of May 9, 2006."

On appeal, appellant argues that the diagram of the building and a statement from her describing her location when she fell were the only issues needed to settle the matter.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[2] An employee seeking compensation under the Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[3]

Causal relationship is a medical issue[4] 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 of the physician must be based on a complete factual and medical background of the claimant,[5] must be one of reasonable medical certainty[6] 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.[7]

ANALYSIS

After the Board's June 26, 2007 decision, the Office obtained additional factual evidence and accepted that appellant had met her burden of proof to establish that she experienced a specific incident occurring at the time, place and in the manner alleged. The Office determined that she was in the performance of duty when this incident occurred. The only question that remains before the Office can accept appellant's claim is whether the May 9, 2006 work incident caused an injury.

Appellant's record contains medical evidence, but none of this evidence is sufficient to establish that the May 9, 2006 work incident caused an injury. Dr. Freedberg's December 5, 2006 form report and his request for durable medical equipment relates to an injury on November 8, 2006. The May 15, 2006 bill for therapeutic exercises appears to relate to a hospital admission in August 2005 and makes no mention of the May 9, 2006 work incident. The May 19, 2006 progress note is the only medical evidence that offers a diagnosis reasonably contemporaneous to the incident, but it offers no medical opinion on whether the May 9, 2006

[2] 5 U.S.C. § 8102(a).

[3] *See Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). *See generally John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Mary J. Briggs*, 37 ECAB 578 (1986).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

incident caused contusions or an injury to one of the joints in appellant's left leg. Dr. Helman's May 10, 2006 note acknowledges trauma from a fall on May 9, 2006 but does not identify the trauma or explain how the incident caused a specific diagnosis.

As the Board noted earlier, appellant must submit a narrative medical report from a physician who provides a complete factual and medical history and who soundly explains how the May 9, 2006 work incident caused a firmly diagnosed medical condition. The physician's medical rationale explaining causal relationship is critical to appellant's claim. Without this evidence, appellant has not met her burden of proof to establish that the May 9, 2006 work incident caused an injury. The Board will affirm the Office's October 23, 2007 decision denying compensation.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that the May 9, 2006 work incident caused an injury.

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 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