United States Department of Labor
Employees' Compensation Appeals Board

L.G., Appellant	)	
and	)	**Docket No. 08-994**
	)	**Issued: September 15, 2008**
DEPARTMENT OF VETERANS AFFAIRS, AUDIE L. MURPHY VETERANS HOSPITAL, San Antonio, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 9, 2008 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated July 27, 2007 and January 24, 2008 that denied her claim. 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 met her burden of proof to establish that she sustained an employment-related injury on May 3, 2007.

FACTUAL HISTORY

On June 1, 2007 appellant, then a 50-year-old medical technologist, filed a traumatic injury claim alleging that on May 3, 2007 she injured her back, buttocks and right ankle while climbing on a step stool at work. She did not stop work. In a June 11, 2007 form report, Dr. Frank J. Garcia, a Board-certified orthopedic surgeon, diagnosed right gluteal tendinitis,

trochanteric bursitis and right ankle pain/sprain. He noted that x-rays demonstrated a healed right ankle fracture and that both the ankle and right hip demonstrated mild osteoarthritic changes. Dr. Garcia advised that appellant could work four hours a day and provided restrictions of no pushing, pulling, prolonged standing or walking, climbing, bending, or squatting with a lifting restriction of 5 to 10 pounds.

By statement dated May 3, 2007, Agapito Lambert, Jr., safety manager, described the May 3, 2007 incident. He noted that, because appellant stated that she could not sit in the chair in the urinalysis section and raise it to the desired level without difficulty, he visited the laboratory to evaluate the problem. Mr. Lambert stated that, after he demonstrated the required steps to raise the chair, he put it back to the lowest level and asked appellant to sit in the chair and attempt to raise it, which she could not do. He then placed the chair against a desk to keep it from rolling and used an available step stool to assist her so that she could keep her feet flat. Mr. Lambert related that at that point appellant became visibly upset so he immediately stopped the evaluation and she left for the day.

On June 26, 2007 the Office informed appellant of the evidence needed to support her claim. She was given 30 days to respond.

By decision dated July 27, 2007, the Office denied the claim. It found that the evidence submitted was insufficient to establish that the May 3, 2007 incident occurred as alleged and that the medical evidence did not provide a diagnosis which could be connected to the incident.

On August 13, 2007 appellant, through her attorney, requested a hearing. She submitted reports dated July 2, 2007 in which Dr. Garcia reiterated his diagnoses and restrictions. In an attending physician's report dated July 17, 2007, Dr. Garcia diagnosed right hip contusion and right ankle fracture and checked a "yes" box, indicating that the condition was employment related. He stated that appellant was able to return to work on May 3, 2007. In a July 30, 2007 duty status report, Dr. Garcia again advised that appellant could work four hours a day with restrictions.

By letter dated July 24, 2007, appellant asserted that her hip was also injured on May 3, 2007. On that day, she informed David Teplicek, her supervisor, and Mr. Lambert that she was restricted from climbing due to a previous injury, but was ignored and told to climb on the chair, which would roll away. Appellant stated that she felt pain shoot up her leg to her back. She became upset, left work, and had to sit in the parking lot until she was able to drive home. In an e-mail dated April 28, 2007, Mr. Lambert advised that an ergonomic assessment of the urinalysis work area had been completed that day and the existing stool was replaced with one that could easily be raised and lowered and had been tested by two employees who commented that it was easy to use.

At the hearing appellant described the May 3, 2007 incident, stating that she was injured at work in 2004 in a fall from a chair. The employing establishment obtained a new, high chair to work in the urinalysis unit after her return from an employment-related ankle fracture.[1]

[1] The ankle fracture claim was adjudicated by the Office under file number 162081154, and the instant claim under file number 162128046.

Appellant stated that on May 3, 2004 she was wearing an air cast on her ankle and, after her shift ended, the safety manager tried to instruct her in use of the new chair. As she tried to climb on it, she experienced pain from her ankle into her hip, and could only work four hours a day.

In a December 12, 2006 report, Dr. Garcia noted that appellant was wearing a walking cast for her right ankle fracture that had occurred a few weeks previously. He diagnosed a lateral malleolus fracture of the right ankle and a right hip contusion. On April 3, 2007 Dr. Garcia reported that appellant was seen for follow-up of the right ankle fracture which, on x-ray, was healing nicely. He advised that she continue light duty for four hours a day.

On May 24, 2007 Dr. Christine Vidouria, an osteopath, reported that appellant needed a walker at all times. In a June 12, 2007 duty status report, Dr. Patricia Snoga, Board-certified in family medicine, noted physical findings of right hip and lumbar tenderness with radiculopathy. She diagnosed right hip bursitis and lumbar sciatica and provided restrictions that appellant could sit, grasp, perform fine manipulation, drive a vehicle and operate machinery for four hours daily, could stand for two hours daily, walk for one to two hours daily, and could not climb, kneel, bend, stoop, twist, push, pull or reach above the shoulder, with a lifting restriction of 0 to 10 pounds. On September 28, 2007 Dr. Garcia advised that, following appellant's ankle fracture, she experienced pain and discomfort when she pushed off the step stool and tried to climb, stating "this could be considered an exacerbation of the preexisting condition to some degree." He noted that physical examination of the ankle showed no swelling with good range of motion, and that she had tenderness over the trochanteric bursa. Dr. Garcia diagnosed trochanteric bursitis and abduction strain and ankle sprain.

By letter dated November 30, 2007, Arlene B. Rubin, R.N., M.S., workers' compensation coordinator, advised that appellant was off work for over a year due to a 2004 ankle injury but had been examined by both a second opinion physician and an impartial examiner and that both opined she could work eight hours a day.

In a January 24, 2008 decision, an Office hearing representative found the May 3, 2007 incident established and affirmed the July 27, 2007 Office decision, finding the medical evidence insufficient to support a medical condition resulting from the incident.

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 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]

[2] 5 U.S.C. §§ 8101-8193.

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

Section 10.5(ee) of Office regulations defines 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 Office hearing representative found that the May 3, 2007 incident occurred. The Board, however, finds that the evidence of record is insufficient to establish that appellant sustained an injury or medical condition caused by this incident. In a May 24, 2007 report, Dr. Vidouria merely advised that appellant should use a walker. On June 12, 2007 Dr. Snoga provided physical findings, diagnoses and restrictions to appellant's physical activity. Neither Dr. Snoga nor Dr. Vidouria provided an opinion regarding the cause of the diagnosed conditions. 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.[9] Dr. Garcia submitted several reports but most did not include any opinion on causal relationship.[10] In a July 17, 2007

[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).

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

[10] *Id*.

attending physician's report, he checked a form question "yes," indicating that the diagnosed conditions were employment related. It is well established that where, as here, a physician's opinion on causal relationship merely consists of checking "yes" to a form question is of diminished probative value.[11] On September 28, 2007 Dr. Garcia reported a history that following her ankle fracture, appellant had pain and discomfort when she pushed off the step stool and tried to climb, and opined that "this could be considered an exacerbation of the preexisting condition to some degree." The Board finds this report insufficient to meet appellant's burden of proof because Dr. Garcia did not explain the mechanism of injury.[12] Furthermore, Dr. Garcia used equivocal language, advising that "this could be considered an exacerbation of the preexisting condition to some degree." While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.[13] Dr. Garcia's opinion on causal relationship is speculative.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment injury on May 3, 2007.

[11] *Cecelia M. Corley*, 56 ECAB 662 (2005).

[12] *See T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008).

[13] *Ricky S. Storms*, 52 ECAB 349 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 24, 2008 is affirmed.

Issued: September 15, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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