United States Department of Labor
Employees' Compensation Appeals Board

J.T., Appellant	)	
and	)	**Docket No. 09-368**
	)	**Issued: August 21, 2009**
DEPARTMENT OF JUSTICE, U.S. MARSHALS SERVICE, Arlington, VA, Employer	)	

Appearances:
Appellant, pro se
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 November 19, 2008 appellant filed a timely appeal of the October 15, 2008 merit decision of the Office of Workers' Compensation Programs, which denied her traumatic injury claim. She also timely appealed the Office's October 29, 2008 decision, denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of appellant's claim.

ISSUES

The issues are: (1) whether appellant sustained an injury in the performance of duty on July 7, 2008; and (2) whether the Office properly denied appellant's October 21, 2008 request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 10, 2008 appellant, a 52-year-old tort claims analyst, filed a claim (Form CA-1) for an injury to her right wrist. She explained that she was injured on July 7, 2008 while trying to retrieve a card that had fallen between her desk and the adjacent wall. When appellant stood

up her feet were entangled in electrical wires and she fell forward against the wall. The incident allegedly exacerbated a prior wrist injury.[1] Appellant described her claimed injury as "strain, sprain and bone chip."

The Office received treatment notes dated July 8, 2008 that included a diagnosis of "sprain aggravation of previous injury." Appellant was seen for a "new injury to her [right] wrist and hand." She reportedly "tripped over wire, slammed her [right] wrist [July 7, 2008], bent the brace with pain and swelling in the area." Physical examination revealed decreased range of motion of the hand and wrist without marked swelling. There was no neurological deficit and x-rays of the hand revealed no new fracture. However, the right wrist showed some calcification by the ulnar styloid that was likely consistent with previous triangular fibrocartilage complex (TFC) tear. Appellant was referred to physical therapy. The July 8, 2008 treatment notes bear the initials "MHS."

The Office also received a July 9, 2008 report from physical therapist, Mary M. Wooten, DPT, who identified the referring physician as "Michael [H.] Snedden, MD," a Board-certified orthopedic surgeon. The referring diagnosis was "[r]ight wrist sprain/torn TFC right wrist." The date of injury was reported as April 30, 2008. Ms. Wooten's notes indicated a prior history of injury on April 30, 2008, for which appellant had been undergoing physical therapy. Appellant reportedly had fallen again two days prior and injured the right wrist and hand again. She had been wearing a brace for the past four weeks and then she tripped two days prior on some computer wires and fell onto both upper extremities. Appellant advised the physical therapist that her symptoms were a great deal worse since the second fall.[2]

Appellant saw Dr. Snedden, "MHS," for a follow-up examination on August 4, 2008.[3] Dr. Snedden noted that appellant felt that her therapy had been helping, although she did note some recurrent pain after doing a lot of activity Friday. He thought that she most likely had some extensor carpi ulnaris (ECU) tendinitis superimposed on her TFC tear.

On September 11, 2008 the Office advised appellant that the current evidence of record was insufficient to establish that she sustained an injury as alleged. Appellant was afforded 30 days within which to submit a comprehensive medical report from her physician regarding the claimed July 7, 2008 injury.

The Office subsequently received additional physical therapy notes from Ms. Wooten. Appellant also submitted treatment notes from Dr. Snedden dated September 15, 2008, who reported that she felt that she was getting better. Dr. Snedden also noted that she still experienced some sharp pain when she lifted aggressively, but otherwise she was happy with her progress. He advised her to continue with her nonsurgical care and to follow up as needed. Appellant was also instructed to continue wearing her wrist brace for heavy lifting.

[1] Appellant initially injured her right wrist on April 30, 2008.

[2] The record includes additional physical therapy notes from July 15 through September 15, 2008.

[3] Ms. Wooten's July 15, 2008 physical therapy treatment notes identified Dr. Snedden as the author of the July 8, 2008 treatment notes.

By decision dated October 15, 2008, the Office denied appellant's traumatic injury claim. While appellant established that the July 7, 2008 incident occurred as alleged, she failed to establish that she sustained an injury as a result of the incident.

On October 21, 2008 appellant requested reconsideration. She resubmitted Dr. Snedden's treatment notes from July 8, August 4 and September 15, 2008.

In a decision dated October 29, 2008, the Office denied appellant's request for reconsideration.

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[5]

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury.[7]

ANALYSIS -- ISSUE 1

As a preliminary matter, the Board notes that a sizeable portion of the medical evidence of record consists of physical therapy records from Ms. Wooten, DPT. A physical therapist is not a "physician," as defined under the Act.[8] Therefore, the opinions offered by such healthcare professionals are not considered competent medical evidence for purposes of determining one's entitlement to benefits.[9] The only ostensibly competent medical evidence was provided by

[4] 5 U.S.C. §§ 8101-8193 (2006).

[5] 20 C.F.R. § 10.115(e)(f) (2008); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

[6] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[9] *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

Dr. Snedden. His treatment notes include multiple diagnoses, including right wrist sprain, right TFC tear and ECU tendinitis. But Dr. Snedden failed to adequately explain how the accepted July 7, 2008 employment incident either caused or contributed to any of the diagnosed conditions. Given that appellant injured her right wrist just a few months earlier, it is incumbent upon Dr. Snedden to provide a more detailed explanation than simply "sprain aggravation of previous injury." It is also noteworthy that Dr. Snedden did not further mention a right wrist sprain after July 8, 2008. This begs the question of whether his initial July 8, 2008 diagnosis was appropriate. The Board finds that Dr. Snedden's July 8, August 4 and September 15, 2008 treatment notes are insufficient to satisfy appellant's burden of proof. Accordingly, the Office properly denied her traumatic injury claim.

LEGAL PRECEDENT -- ISSUE 2

The Office has the discretion to reopen a case for review on the merits.[10] Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[11] When an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[12]

ANALYSIS -- ISSUE 2

Appellant's October 21, 2008 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Therefore, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[13] She also failed to satisfy the third requirement under section 10.606(b)(2). Appellant did not submit any relevant and pertinent new evidence with her request for reconsideration. Dr. Snedden's treatment notes were already part of the record. Submitting evidence that either repeats or duplicates information already in the record does not constitute a basis for reopening a claim.[14] Consequently, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).[15]

[10] 5 U.S.C. § 8128(a).

[11] 20 C.F.R. § 10.606(b)(2).

[12] *Id*. at § 10.608(b).

[13] *Id.* at § 10.606(b)(2)(i) and (ii).

[14] *James W. Scott*, 55 ECAB 606, 608 n.4 (2004).

[15] 20 C.F.R. § 10.606(b)(2)(iii).

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on July 7, 2008. The Board further finds that the Office properly denied her October 21, 2008 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the October 29 and 15, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 21, 2009
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