United States Department of Labor
Employees' Compensation Appeals Board

J.F., Appellant	)	
and	)	**Docket No. 10-4**
	)	**Issued: July 1, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Yorkville, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 30, 2009 appellant filed a timely appeal of a June 12, 2009 decision of the Office of Workers' Compensation Programs affirming the denial of her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), 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 a traumatic injury on August 7, 2008 in the performance of duty.

FACTUAL HISTORY

On October 30, 2008 appellant, then a 53-year-old city mail carrier, filed a traumatic injury claim alleging that on August 7, 2008 she injured her right foot after stepping off of a wall and falling into a small hole while delivering mail. She stopped work and first sought medical treatment on October 29, 2008. Appellant returned to modified duty on December 1, 2008. The employing establishment controverted the claim.

On November 4, 2008 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence.

In an October 29, 2008 work status report, Dr. Lawrence DiDomenico, a podiatrist, diagnosed right ankle trauma and advised that appellant remain off work until November 10, 2008. On November 6, 2008 he diagnosed sprain and tenosynovitis. Dr. DiDomenico stated that appellant was unable to work. He also advised that appellant could perform duties of a sit down job only.

An undated and unsigned employing establishment health and resource management form, received from Dr. DiDomenico's office on November 6, 2008, noted work-related diagnoses of anterior talofibular sprain, tenosynovitis and edema. It checked a box "no" indicating that appellant could not return to work on the next scheduled shift. It also indicated that appellant required restrictions due to the work incident and required time off work until approximately December 11, 2008.

A November 15, 2008 witness statement from a mail recipient noted that on August 7, 2009 he saw appellant step off of a small wall into a small hole. He further noted that she fell to the ground then picked herself up and continued making deliveries.

In a November 17, 2008 statement, appellant noted that she did not report her injury to her supervisor at the time it occurred because she believed she could continue with her normal routine and that her condition would improve on its own. She stepped off of a six to eight foot wall and fell into a hole at which time she felt a pulling sensation on the outside of her right foot. Appellant continued making deliveries after her fall. She indicated that her prior medical history included heel spur surgery, hammer toe correction on her right foot and tendon repair that was performed between 1999 and 2001.

In a December 10, 2008 decision, the Office denied appellant's claim finding that, although the evidence supported that the claimed event occurred, there was no medical evidence to support that her diagnosis was connected to the work incident.

Undated work status reports from Dr. DiDomenico advised that appellant could continue sitting only work with no weight bearing. He recommended continued physical therapy. In a November 26, 2008 report, Dr. DiDomenico indicated that on October 29, 2008 appellant complained of hurting her ankle at work but she could not identify a specific date. Appellant complained of pain and tenderness along the ankle joint. Upon examination, Dr. DiDomenico found possible tenosynovitis, no evidence of fracture or dislocation or other significant bone pathology. He noted that a magnetic resonance imaging (MRI) scan performed on October 3, 2008 revealed peroneal brevis tendinosis without significant tear, subluxation, tenosynovitis, thin anterior talofibular ligament without edema or fibrosis and chronic calcaneal heel spur without inflammation. Dr. DiDomenico opined that appellant's condition and diagnosis was believed to be caused by an aggravated injury that appellant stated she sustained at work in August 2008.

Appellant requested reconsideration on March 12, 2009, contending that Dr. DiDomenico provided a firm diagnosis and that she was scheduled for surgery. She provided a summary of her medical treatment.

In a March 4, 2009 report, Dr. DiDomenico noted treating appellant on February 11, 2009 for a work injury sustained on August 7, 2008 when she sustained right ankle trauma after stepping off of a small wall directly into a hole. Appellant had a peroneal tendon rupture of the right ankle resulting in instability. Dr. DiDomenico noted his findings were consistent with MRI scan findings. He stated that appellant was scheduled for right ankle stabilization and tendon debridement on March 16, 2009. Dr. DiDomenico opined that the injury was directly caused by factors of her employment.

In a June 12, 2009 decision, the Office denied appellant's claim. It found that, although there was a definitive diagnosis in connection with the claimed work incident, the medical evidence was insufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[2]

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 experienced the employment incident at the time, place and in the manner alleged. 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.[3]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[4]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *Id*.

[4] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The record reflects that on August 7, 2008 appellant fell after stepping off of a wall and landing in a hole while delivering mail. However, the medical evidence does not establish that the August 7, 2008 fall caused or aggravated appellant's alleged right foot condition.

In a November 26, 2008 report, Dr. DiDomenico noted that during an October 29, 2008 visit appellant complained of injuring her ankle at work but could not identify on which particular date the injury occurred. He indicated his examination revealed no fracture, dislocation or other significant bone pathology. Dr. DiDomenico also indicated that an MRI scan revealed peroneal brevis tendinosis without significant tear. He opined that appellant's condition was caused by an aggravated injury that she reported occurred in August 2008. Although Dr. DiDomenico's report supports causal relationship, his opinion is of limited probative value as it was not derived independent of appellant's belief that her condition was caused by an employment incident.[5] He did not explain the reasons why he felt that the August 7, 2008 incident, for which no medical treatment was sought until October 29, 2008, would cause or aggravate the diagnosed condition.

Moreover, Dr. DiDomenico's November 26, 2008 report conflicts with the findings in his March 4, 2009 report. In particular, he definitively stated in his March 4, 2009 report that appellant sustained a right ankle injury at work on August 7, 2008 when his prior report indicated that appellant was unable to identify the specific date of injury. Dr. DiDomenico did not indicate what new information caused him to have a more specific date of injury. Also, his March 4, 2009 report noted that appellant had peroneal tendon rupture of the right ankle that resulted in instability, and that this finding was consistent with MRI scan results. However, on November 26, 2008 Dr. DiDomenico determined that an MRI scan report supported his finding on examination that appellant's right ankle had no fractures, dislocations or any other significant bone pathology. He also recognized that the MRI scan indicated peroneal brevis tendinosis without significant tear. Dr. DiDomenico did not explain the inconsistencies in his reports and did not provide the actual MRI scan results to support any of his findings.[6] Additionally, his March 4, 2009 opinion that appellant's injury was directly caused by her employment was too

[5] *William Nimitz*, 30 ECAB 567 (1979) (where the Board has held that an award for compensation may not be predicated upon appellant's belief of causal relation as such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability); *see Lois E. Culver* (*Clair L. Culver*), 53 ECAB 412 (2002) (the opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship).

[6] The weight of medical evidence is determined by its reliability, its probative value and its convincing quality. The factors that comprise the evaluation of medical evidence include the opportunity for and the thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. The opinion of a physician must be of reasonable medical certainty and must be supported by medical rationale explaining causal relationship. *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007).

general and was unsupported by any medical rationale explaining how appellant's employment caused a specific injury.[7]

None of Dr. DiDomenico's other reports of record specifically address the issue of causal relationship and are therefore of limited probative value.[8]

The record also contains an unsigned and unidentifiable health and resource management form. However, medical reports lacking proper identification do not constitute probative medical evidence.[9]

For these reasons, the medical evidence is insufficient to meet appellant's burden of proof to establish that she sustained a traumatic injury on August 7, 2008 in the performance of duty.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on August 7, 2008 in the performance of duty.

[7] *T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

[8] *See S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009) (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] *See D.D.*, 57 ECAB 734 (2006).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated June 12, 2009 is affirmed.

Issued: July 1, 2010
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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