United States Department of Labor
Employees' Compensation Appeals Board

A.S., Appellant	)	
and	)	**Docket No. 09-1913**
	)	**Issued: March 10, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Winthrop, ME, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 21, 2009 appellant filed a timely appeal from a June 23, 2009 merit decision of the Office of Workers' Compensation Programs. Under 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 sustained a right ankle injury on April 28, 2009, as alleged.

FACTUAL HISTORY

Appellant, a 48-year-old letter carrier, filed a claim on April 30, 2009, alleging that she injured her right ankle on April 28, 2009.

In an April 28, 2009 report, Dr. Diana Drown, a chiropractor, stated that appellant was examined that date and could return to work on May 5, 2009. She noted that physical restrictions, if any, were pending due to medical issues.

In a report dated May 5, 2009, Dr. John R. Benziger, Board-certified in pathological medicine, stated that appellant had dermatofibroma; *i.e.*, a skin lesion on her left arm and left leg. He indicated that he excised both of the lesions.[1]

In an April 28, 2009 x-ray report, received by the Office on May 29, 2009, Dr. Seth M. Hardy, a specialist in internal medicine, indicated that Dr. Drown referred appellant for x-ray examination due to right ankle joint pain. He obtained three views of her right ankle that showed effusion and a large plantar spur, with normal mortise and talar dome. Dr. Hardy advised that there could be a small avulsion of the lateral malleolus.

In a report dated May 8, 2009, received by the Office on June 3, 2009, Dr. Drown stated that appellant was examined that day and could return to work on May 11, 2009 without restrictions.

On May 21, 2009 the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive medical report from a treating physician describing her symptoms and the medical reasons for her condition. The Office requested an opinion as to whether her claimed condition was causally related to her federal employment. It asked that appellant submit the additional evidence within 30 days. Appellant did not respond.

By decision dated June 23, 2009, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence to establish that she sustained a right ankle injury on April 28, 2009.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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

[1] The Office also received a May 4, 2009 report from Maureen Rosenberg, a physician's assistant, who assisted Dr. Benziger with the examination and skin lesion excision procedures.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

experienced the employment incident at the time, place and in the manner alleged.[5] 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.[6] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized 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]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[8]

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[9] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

The Office accepted that appellant walked on a stretch of pavement on April 28, 2009 while performing her duties as a letter carrier. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.[10] Appellant has not submitted sufficient, probative medical evidence to establish that the April 28, 2009 employment incident caused the claimed ankle injury.

The reports of Dr. Drown, a chiropractor, do not constitute medical evidence pursuant to section 8101(2) of the Act. They do not contain a diagnosis of spinal subluxation as shown by x-ray.[11] Dr. Hardy's April 28, 2009 report stated findings on examination and indicated that appellant had right ankle effusion, a large plantar spur and a possible small avulsion of the lateral malleolusa. He did not relate these diagnoses to the April 28, 2009 incident at work. The weight

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

[6] *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

[7] *Id.*

[8] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[9] *Id.*

[10] *Carlone*, *supra* note 5.

[11] 5 U.S.C. § 8101(2): "The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist." The Board notes that evaluation of an ankle is beyond the scope of expertise of a chiropractor under the Act.

of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[12] Dr. Benziger's May 5, 2009 report indicated that appellant was treated for skin lesions. His report has no relevance to appellant's claim for a right ankle injury. The medical reports of record do not explain how appellant sustained a right ankle injury while walking during her employment on April 28, 2009. There is insufficient rationalized evidence of record to establish her right ankle injury as work related. The report from the physician's assistant has no probative value. As a physician's assistant is not a physician as defined under section 8101 of the Act.[13] The Board finds that appellant failed to submit a medical report from a physician that explains how the work incident of April 28, 2009 caused or contributed to the claimed right ankle injury.

The Office properly denied appellant's claim for compensation.[14]

CONCLUSION

The Board finds that appellant has failed to establish that she sustained a right ankle injury on April 18, 2009.

[12] *See Anna C. Leanza*, 48 ECAB 115 (1996).

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

[14] The Board notes that appellant submitted additional evidence to the record following the June 23, 2009 Office decision. The Board's jurisdiction is limited to a review of evidence, which was before the Office at the time of its final review. 20 C.F.R. § 501(c).

ORDER

IT IS HEREBY ORDERED THAT the June 23, 2009 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 10, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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