

**United States Department of Labor
Employees' Compensation Appeals Board**

E.S., Appellant)	
)	
and)	
)	Docket No. 09-2260 Issued: May 13, 2010
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Wichita, KS, Employer)	

Appearances: *Case Submitted on the Record*
 Appellant, pro se
 Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On September 10, 2009 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated August 12, 2009 denying her traumatic injury 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 established that she sustained an injury in the performance of duty on May 15, 2008.

FACTUAL HISTORY

On May 15, 2008 appellant, then a 45-year-old patient services assistant, filed a traumatic injury claim alleging that she bruised both kneecaps, skinned her left leg and both hands that day when her foot slid into a hole while walking across a grassy area.

In a July 9, 2009 letter, the Office informed appellant that the evidence was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required to support her claim and given 30 days to provide this information.

Appellant submitted a July 15, 2009 statement and a February 3, 2009 report by Dr. David W. Niederee, a treating Board-certified family medicine practitioner. She alleged that she informed her supervisor following the injury and went to a clinic for treatment. Appellant noted that there was no sidewalk in front of the clinic so that she walked onto the grassy area where her foot slid into a hole about two feet deep. She noted her index/trigger finger would not straighten out and was jammed following the incident.

On February 3, 2009 Dr. Niederee reported seeing appellant that day for a complaint of right wrist pain and headaches. He diagnosed migraines and trigger finger. Dr. Niederee noted that appellant had moderate-to-severe wrist pain that had been persistent for the past month. Appellant also reported acute headaches, which had occurred in a persistent pattern every two hours.

In an August 12, 2009 decision, the Office denied appellant's traumatic injury claim, finding that the evidence was insufficient to establish that she sustained a right wrist injury, explaining there was no diagnosed condition.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of 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 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.³ 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.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.⁵ First, the employee must submit sufficient evidence to establish that he or she actually

¹ Following the August 12, 2009 decision, the Office received additional evidence. Appellant also submitted new medical evidence with her appeal. However, the Board may not consider evidence for the first time on appeal. See 20 C.F.R. § 501.2(c); *M.B.*, 60 ECAB ____ (Docket No. 09-176, issued September 23, 2009); *J.T.*, 59 ECAB ____ (Docket No. 07-1898, issued January 7, 2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

² 5 U.S.C. §§ 8101-8193.

³ *C.S.*, 60 ECAB ____ (Docket No. 08-1585, issued March 3, 2009).

⁴ *S.P.*, 59 ECAB ____ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *B.F.*, 60 ECAB ____ (Docket No. 09-60, issued March 17, 2009).

experienced the employment incident at the time, place and in the manner alleged.⁶ 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.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ 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.⁹ 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.¹⁰

ANALYSIS

Appellant alleged that she injured her knees, left leg and hands when her foot slid into a hole as she was walking in a grassy area on the employer's premises and she fell. The Office accepted that the incident occurred at the time, place and in the manner alleged. The issue is whether the medical evidence establishes that appellant sustained an injury as a result of this incident.

The Board finds that the medical evidence is insufficient to establish that appellant sustained an injury causally related to the May 15, 2008 work incident. Appellant did not submit a rationalized medical report from an attending physician addressing how the May 15, 2008 incident caused or contributed to her claimed condition.

Appellant submitted a February 3, 2009 report from Dr. Niederee who diagnosed migraines and trigger finger. Dr. Niederee made no reference to the May 15, 2008 incident nor provided any medical opinion as to the cause of her migraines or trigger finger. His report is insufficient to establish appellant's claim as he did not provide any history of the May 15, 2008 incident or address how her fall that day caused or contributed to the diagnosed medical conditions.¹¹ The opinion of Dr. Niederee is of reduced probative value and insufficient to meet appellant's burden of proof.

⁶ *D.B.*, 58 ECAB 440 (2007).

⁷ *C.B.*, 60 ECAB ____ (Docket No. 08-1583, issued December 9, 2008); *D.G.*, 59 ECAB ____ (Docket No. 08-1139, issued September 24, 2008).

⁸ *Y.J.*, 60 ECAB ____ (Docket No. 08-1167, issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006).

⁹ *J.J.*, 60 ECAB ____ (Docket No. 09-27, issued February 10, 2009).

¹⁰ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *A.D.*, *supra* note 8; *Conard Hightower*, 54 ECAB 796 (2003) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury causally related to her May 15, 2008 employment incident.

ORDER

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

Issued: May 13, 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