United States Department of Labor
Employees' Compensation Appeals Board

R.H., Appellant	)	
and	)	**Docket No. 11-536**
	)	**Issued: December 19, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Louisville, KY, 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, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 30, 2010 appellant, through her attorney, filed a timely appeal from a November 10, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 her right hip condition is causally related to a November 17, 2009 employment incident.

On appeal appellant's attorney contends that the November 10, 2010 OWCP decision is contrary to fact and law.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 17, 2010 appellant, then a 44-year-old clerk, filed a notice of traumatic injury (Form CA-1) alleging that on November 17, 2009 she sustained a right hip injury after tripping over a raised carpet while in the performance of duty.

In a letter dated February 19, 2010, the employing establishment indicated that appellant's injury was not reported on a Form CA-1 within 30 days and she never filed an accident report for any injury regarding her hip or leg.

By letter dated March 5, 2010, OWCP notified appellant that the evidence submitted was insufficient to support her claim and requested additional factual and medical information. It allotted her 30 days to submit additional evidence and respond to its inquiries.

On March 5, 2010 the employing establishment controverted appellant's claim. On March 22, 2010 appellant responded. In a March 24, 2010 statement, the employing establishment reiterated that her injury was not employment related. On March 25, 2010 it submitted a number of witness statements indicating that appellant was injured while working in her garden at home.

In a March 18, 2010 narrative statement, appellant indicated that she was not aware that she had to give written notice. She stated that she was working alone and had no witnesses to her injury. Appellant indicated that she had similar disability or symptoms before the injury on June 8 and November 5, 2009. She left work both days and sought medical treatment.

By decision dated April 9, 2010, OWCP denied appellant's claim on the basis that the factual and medical evidence submitted was insufficient to establish fact of injury. It found that the evidence she submitted was not sufficient to establish that the November 17, 2009 employment incident occurred as alleged and that there was no medical evidence that provided a diagnosis which could be connected to the claimed event.

On April 15, 2010 appellant, through her attorney, requested an oral hearing and submitted additional evidence.

In a December 21, 2009 medical report, Dr. Jeffrey B. Selby, a Board-certified orthopedic surgeon, diagnosed right hip labral tear and possible right femoral hernia. He reported a history that appellant was in her garden when her right foot got caught in mud and, as she turned to walk away, her foot got stuck and her hip turned, resulting in pain in the anterior hip area. Dr. Selby stated that it was fairly minor pain at the time, however, it intensified over the next few days when she tried to return to work as a postal clerk.

In a January 4, 2010 medical report, Dr. John E. Merryman, III, a Board-certified general surgeon, indicated that upon examination of the right groin in both the standing and supine positions he felt no mass or bulge or impulse even with Valsalva and no tenderness. He indicated that it was a normal examination with no signs of hernia.

In a January 11, 2010 medical report, Dr. Selby indicated that appellant was status post evaluation for right hip labral surgery. He also wrote appellant a work excuse note dated January 11, 2010.

In a January 19, 2010 surgical report, Dr. Selby performed right hip diagnostic arthroscopy with labral debridement and femoral acetabular chondroplasty. He indicated that the preoperative diagnosis was right hip pain and the postoperative diagnosis was right hip femoral acetabular chondromalacia with posterior labral degenerative tear.

In a January 29, 2010 progress report, Dr. Selby advised that appellant had no pain with log-rolling of her hip and had full pain-free range of motion after surgery. Bill Adkisson, a physician's assistant, wrote appellant a work excuse note dated January 29, 2010 for the next four weeks.

Appellant submitted a physical therapy note dated February 2, 2010.

In a March 1, 2010 medical report, Dr. Selby indicated that appellant had mild pain with internal rotation of the hip. Appellant had hip flexion to 120 degrees, external rotation to 45 degrees and internal rotation to 30 degrees. Dr. Selby restricted appellant from heavy lifting and twisting at work for six weeks.

In a March 26, 2010 medical report by Mr. Adkisson, appellant reported a significant amount of pain. Upon clinical examination, she had no pain with log-rolling of her hip, had no calf tenderness and her Homan's test was negative. Appellant walked with a limp without any ambulatory aids. Mr. Adkisson opined that infection was not a source of her pain and recommended two weeks of physical therapy before slowly starting it again.

In an April 4, 2010 attending physician's report, Dr. Selby indicated that appellant's date of injury was June 8, 2009. He diagnosed right acetabular chondromalacia with labral tear. Dr. Selby opined that the condition was caused or aggravated by the employment incident.

On July 22, 2010 a telephonic hearing was held before an OWCP hearing representative. Appellant testified that on November 17, 2009 her right hip was already injured as a result of two previous incidents. She was using a cane and crutches and had a note from her physicians to remain off work. Appellant testified that she was not working limited duty as her supervisor informed her that the employing establishment did not give limited or light-duty assignments. She had a disability certificate starting on November 6, 2009 for three weeks and she should not have been at work but the employer was shorthanded and they asked her to work in a different position, which would be working the window and sitting on a stool. Appellant agreed to try it and worked on November 16 and 17, 2009. She testified that she was working alone and had a customer who required the use of a computer. Appellant paged for help and no one came and the lines kept getting longer so she got off of the stool and then tripped and fell on a raised piece of carpet. The hearing representative granted appellant's request to hold the case open for 30 days for submission of additional medical evidence.

In an August 11, 2010 letter, the employing establishment provided a statement which refuted appellant's alleged injury and how it occurred. In an August 10, 2010 statement, appellant's supervisor noted that she never asked appellant to work a light-duty assignment. She

explained that under a local union contract there were no light-duty assignments in their office. Appellant's supervisor was told that appellant wanted to return to work until her physicians could decide what treatment and possible surgery she may require. She reported that another clerk was working the window with appellant and told her that appellant did not fall. Appellant's supervisor also stated that she never once heard the pager which is a loud speaker. She explained that she never saw appellant sitting on the floor, but did see her leaning back against the wall. When appellant's supervisor asked appellant why she was not using her cane or crutches like her physician told her to, appellant responded, "I don't know."

In a September 20, 2010 narrative statement, appellant indicated that she began experiencing groin pain in early summer 2009. She stated that the other window clerk told her supervisor that he did not see her fall because she was working the window alone when she fell which she claimed could be proven by checking clock rings and other transactions.

By decision dated November 10, 2010, OWCP's hearing representative affirmed the April 9, 2010 decision on the grounds that, due to inconsistencies in the factual presentation in the medical history, appellant's nonemployment-related injury and her ability to continue working after receiving emergency treatment, she failed to establish fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury[3] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[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. A fact of injury determination is based on two elements. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[5]

[2] 5 U.S.C. §§ 8101-8193.

[3] OWCP's regulations define 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[4] *T.H.*, 59 ECAB 388 (2008). *See Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Id. See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

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.[6]

ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that on November 17, 2009 she sustained a right hip injury after tripping over a raised carpet while in the performance of duty. As noted, the first element of fact of injury requires that she submit evidence establishing that an incident occurred at the time, place and in the manner alleged. In narrative statements dated March 18 and September 20, 2010, appellant reported that she was working at the window alone when the injury occurred. However, the Board finds that there are such inconsistencies in the evidence to cast doubt upon the validity of her claim.

In a December 21, 2009 report, Dr. Selby obtained a history that appellant was in her garden when her right foot got caught in mud and as she turned to walk away her foot got stuck and her hip turned, resulting in pain in the anterior hip area. He performed right hip surgery on January 19, 2010 and never revised this history. On March 25, 2010 the employing establishment submitted witness statements advising that appellant was injured while working in her garden at home. On April 4, 2010 Dr. Selby indicated that her date of injury was June 8, 2009 but did not further explain. In an August 10, 2010 statement, appellant's supervisor reported that another clerk was working the window with appellant when the alleged incident occurred and reported that appellant did not fall. In a September 20, 2010 narrative statement, appellant indicated that she began experiencing groin pain in early summer 2009. The supervisor's statement, Dr. Selby's reports and appellant's own statements are inconsistent with the surrounding facts and circumstances.[7] Appellant has not reconciled these contradictions in the record.

Moreover, appellant did not file a claim until February 17, 2010, some three months after the November 17, 2009 incident, which constitutes late notification of injury. In a letter dated February 19, 2010, the employing establishment indicated that appellant never filed an accident report for any injury regarding her hip or leg.

The evidence submitted contains such inconsistencies as to cast doubt on the validity of appellant's claim. Accordingly, the Board finds that she has not met her burden of proof in

[6] *Id. See Gary J. Watling*, 52 ECAB 278 (2001).

[7] *Cf. S.A.*, Docket No. 10-1786 (issued May 4, 2011) (where the Board found that appellant established that the incident occurred as alleged, as there were no inconsistent statements from appellant or other evidence refuting the occurrence of the alleged incident).

establishing that she experienced an employment-related incident at the time, place and in the manner alleged.[8]

On appeal appellant's attorney contends that the November 10, 2010 OWCP decision is contrary to fact and law. For the reasons stated above, the Board finds the attorney's argument is not substantiated.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not submitted sufficient evidence to establish that she sustained a right hip condition in the performance of duty on November 17, 2009, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[8] Given that appellant did not establish an employment incident, further consideration of the medical evidence is unnecessary. *See Bonnie A. Contreras*, 57 ECAB 364, 368 n.10 (2006).