United States Department of Labor
Employees' Compensation Appeals Board

D.R., Appellant	)	
and	)	**Docket No. 10-899**
	)	**Issued: January 6, 2011**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Union, NJ, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 18, 2010 appellant filed a timely appeal from an October 9, 2009 merit decision of the Office of Workers' Compensation Programs, denying her claim for an employment-related injury. 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 met her burden of proof to establish that she sustained an injury in the performance of duty on August 26, 2009, as alleged.

On appeal, appellant requests that the Office pay an outstanding medical bill in the amount of $1,500.00 for services rendered on October 1, 2009 at Medical Imaging Center of North Jersey, Inc., Clifton, NJ.

FACTUAL HISTORY

On September 2, 2009 appellant, then a 31-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on August 26, 2009 she injured herself when she picked up a bag from the luggage belt. She swung it and lost her balance. Appellant alleged that she took a wrong step and injured the bottom of her left foot and her left calf. Her supervisor, Reginald Mozoul, completed the supervisor's report portion of the form and indicated, that she was injured in the performance of duty and agreed with her statement of facts about the injury.

Appellant submitted an Occupational Safety & Health Incident Investigation Report dated September 2, 2009 on which her supervisor certified that appellant twisted her left leg while moving a bag off the belt on August 26, 2009 and that the incident was caused by work activity. The outcome section of the form, which contained boxes for "traumatic injury," "occupational disease or illness" and "no injury," was left blank.

Appellant submitted an employee statement to workplace injury report dated September 3, 2009 by Phillip May who reported Cammoca Marilyn as the name of the person the injury was reported to on August 26, 2009.

In a duty status report dated September 3, 2009, Dr. John Dellorso, an internist, examined appellant that day. In the section that asked for a description of how the injury occurred and a list of the parts of the body affected, he wrote, "hyperextension injury left foot."

Appellant submitted a report dated September 11, 2009 from a physical therapist who indicated that she reported an employment incident on August 26, 2009 when she was lifting a bag off the belt which resulted in pain to her left foot, heel and calf.

In a progress note dated September 3, 2009, Dr. Dellorso indicated that appellant stepped incorrectly hyperextending her left foot at work on August 26, 2009.

On September 8, 2009 the Office requested additional factual and medical information from appellant. It found that the evidence submitted was insufficient to establish an employment-related injury to her left foot and calf at the time, place and in the manner alleged and requested additional factual information. The Office noted that the employing establishment challenged appellant's claim on the basis that it could not "determine if [the] injury occurred at the workplace because there were no work hazards in the work area that contributed to the injury," because appellant "did not notify the injury to management until September 2, 2009" and because she stated that the injury occurred at the beginning of her shift, but she continued to work throughout her shift. It allotted appellant 30 days to submit additional evidence.

In a report dated October 1, 2009, Dr. Natalio Damien, a Board-certified diagnostic radiologist, advised that a magnetic resonance imaging (MRI) scan revealed "slight soft tissue swelling" in appellant's left foot and that the bony structures were intact with no evidence of a fracture, dislocation, rupture or tear.

By decision dated October 9, 2009, the Office denied the claim for compensation, finding that the evidence was insufficient to establish that appellant sustained an injury as alleged. It

found that she did not establish the August 26, 2009 incident at the time, place or in the manner alleged. Further, the medical evidence submitted in support of the claim was found insufficient.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, and that an injury[2] 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.[3] These are the essential elements of each 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. 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.[5]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a case. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[6]

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[7] Rationalized medical evidence is medical evidence

---

[1] *Id*. at §§ 8101-8193.

[2] The Office'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).

[3] *Donald R. Gervasi*, 57 ECAB 281 (2005).

[4] *Id. See also Gary J. Watling*, 52 ECAB 357 (2001).

[5] *S.P.*, 59 ECAB 184 (2007).

[6] *M.H.*, 59 ECAB 461 (2008).

[7] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[8] 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.[9] A claimant may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.[10]

ANALYSIS

The Office denied appellant's claim, finding that she did not establish that she sustained an employment-related injury on August 26, 2009, as alleged. It found that she failed to establish that the employment incident occurred at the time, place and in the manner alleged and failed to provide sufficient medical evidence to establish causal relationship. The Board finds that the evidence of record is sufficient to establish that the August 26, 2009 incident occurred, as alleged. However, the medical evidence of record is insufficient to establish a work-related injury.

The employing establishment controverted appellant's claim, alleging that there were no work hazards in the area where the incident occurred, that appellant did not notify her supervisors of her injury until September 2, 2009 and that she continued to work throughout her shift after the injury occurred. The Board finds that appellant submitted sufficient factual information to establish by the preponderance of the evidence that she sustained an injury at the time, place and in the manner alleged.

Appellant submitted a September 2, 2009 claim form on which her supervisor, Mr. Mozoul, indicated that she was injured in the performance of duty on August 26, 2009 and that he generally agreed with her statement of facts about the injury. On a September 2, 2009 Occupational Safety & Health Incident Investigation Report, her supervisor certified that she twisted her left leg while moving a bag off the belt on August 26, 2009 and that the incident was caused by work activity. In a September 3, 2009 employee statement to workplace injury report, Phillip May stated that appellant reported her injury to her supervisor, Cammoca Marilyn, on August 26, 2009. In a progress note dated September 3, 2009, Dr. Dellorso indicated that appellant "stepped incorrectly" on August 26, 2009 at work and diagnosed hyperextension of the left foot. Appellant also submitted a report dated September 11, 2009 from a physical therapist who indicated that she reported pain in her left foot, heel and calf after lifting a bag off the belt at work on August 26, 2009.

An employee's statement alleging that an incident occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive

[8] *Donald W. Wenzel*, 56 ECAB 390 (2005).

[9] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *T.H.*, 59 ECAB 388 (2008); *N.S.*, 59 ECAB 422 (2008).

evidence.[11] The factual evidence of record is consistent in describing appellant's incident. It is supported by the statement of Mr. May and appellant's supervisor, who noted she twisted her left leg while moving a bag on August 26, 2009. The Board finds that there is no strong or persuasive evidence refuting that appellant sustained the August 26, 2009 incident as alleged. Consequently, the Board finds that she sustained the incident at work at the time, place and in the manner as alleged.

Appellant submitted a duty status report dated September 3, 2009 by Dr. Dellorso. In the section that asked for a description of how the injury occurred and a list of the parts of the body affected, Dr. Dellorso wrote, "hyperextension injury left foot." In a September 3, 2009 progress note, Dr. Dellorso indicated that appellant "stepped incorrectly hyperextending her left foot at work" on August 26, 2009. Dr. Dellorso failed to provide a history of the incident in which appellant twisted her left foot and did not address the causal relationship between the August 26, 2009 employment incident and appellant's condition. Therefore, the reports of the physician do not provide rationalized medical opinion on the issue of whether the accepted employment incident caused injury to her left foot.

In an October 1, 2009 report, Dr. Damien listed his impression from an MRI scan examination of slight soft tissue swelling in her left foot, without evidence of a fracture, dislocation, rupture or tear. The diagnostic study did not address causal relation. 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.[12] As this report was on the results of diagnostic testing, it did not provide a firm diagnosis of appellant's condition, did not directly address the August 26, 2009 incident and failed to offer any opinion regarding the cause of her condition. This medical evidence is of limited probative value on the issue of causal relationship.

Although appellant established that the employment incident occurred as alleged, the Board finds that she failed to show her condition is causally related to the employment incident.[13] She submitted a September 11, 2009 report from a physical therapist who indicated that she reported an injury to her left foot, heel and calf from lifting a bag off of a belt at work on August 26, 2009. The Board has held that physical therapists are not physicians under the Act.[14] Therefore, the report is not probative medical evidence.[15]

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the August 26, 2009 employment incident, she has failed to meet her burden of proof to establish a claim.

---

[11] *M.H.*, *supra*, note 6; *Bill H. Harris*, 41 ECAB 216 (1989).

[12] *K.W.*, 59 ECAB 271 (2007).

[13] *See Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[14] 5 U.S.C. § 8101(2).

[15] *R.C.*, 61 ECAB ___ (Docket No. 09-2095, issued August 4, 2010); *L.D.*, 59 ECAB 273 (2008); *Vicky L. Hannis*, 48 ECAB 538 (1997).

On appeal, appellant requested payment of a medical bill for diagnostic testing services rendered on October 1, 2009 at Medical Imaging Center of North Jersey, Inc. The Board notes that the Office, however, did not adjudicate the issue of appellant's incurred medical expenses. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee a properly executed CA-16.[16] In this case, the record does not contain a CA-16 or any other authorization from the Office for medical treatment. Additionally, there is no evidence of an emergency or other unusual circumstance.[17] Therefore, the Board finds the evidence does not support reimbursement for the medical expenses.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on August 26, 2009.

[16] *Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (September 1995).

[17] Under section 8103 of the Act, the Office has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances. 5 U.S.C. § 8103; 20 C.F.R. § 10.304. *See Val D. Wynn*, *supra* note 16; *see also supra* note 16 at Chapter 3.300.3(a)(3).

ORDER

IT IS HEREBY ORDERED THAT the October 9, 2009 decision of the Office of Workers' Compensation Programs is affirmed as modified, to reflect that appellant established an employment incident on August 26, 2009.

Issued: January 6, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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