

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

M.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Mounds, OK, Employer**

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**Docket No. 10-1798
Issued: May 4, 2011**

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 June 25, 2010 appellant filed a timely appeal from a May 24, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on April 14, 2010, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the May 24, 2010 Office decision and on appeal, appellant submitted new evidence. However, the Board is precluded from reviewing evidence which was not before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence, together with a formal written request for reconsideration to the Office, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

On appeal appellant requests that the Office pay an outstanding medical bill in the amount of \$1,184.50 for medical services rendered on April 14, 2010.

FACTUAL HISTORY

On April 19, 2010 appellant, then a 54-year-old salesperson, filed a traumatic injury claim (Form CA-1) alleging that on April 14, 2010 she fell on the workroom floor. She indicated that she was walking with a piece of mail when the rubber soles of her shoes got stuck on a rubber mat and she fell onto her hip. Appellant did not stop work.

On April 23, 2010 the Office requested that appellant submit additional factual and medical evidence regarding her claim. It allotted 30 days for her to respond to its inquiries, but she did not respond.

By letter dated May 5, 2010, the employing establishment controverted appellant's claim.

By decision dated May 24, 2010, the Office denied appellant's claim for compensation. It found that the factual and medical evidence was insufficient to establish that the alleged incident occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under the Act³ 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, that an injury⁴ 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.⁵

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.

³ 5 U.S.C. §§ 8101-8193.

⁴ 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).

⁵ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (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

Appellant filed a traumatic injury claim form alleging a fall on April 14, 2010. She described that her rubber-soled shoes got stuck on a rubber mat on April 14, 2010 while she was in the performance of duty as a salesperson, resulting in her falling. The Board finds that there is no evidence of record refuting that the April 14, 2010 incident occurred as alleged. The Board has held that 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 evidence.⁷ The employer submitted a general challenge of the claim: "Please be advised our agency is challenging the enclosed claim for the following reason: Fact of injury and causal relationship to employment." This challenge, however, is insufficient to refute appellant's statements as it is neither strong nor persuasive evidence. Therefore, the Board finds that appellant has established that the incident occurred as alleged on April 14, 2010.

Thus, the issue becomes whether appellant sustained an injury resulting from the employment incident. The only evidence before the Office at the time of the Office's May 24, 2010 decision was the traumatic injury claim form. While the Office requested additional medical evidence, no evidence was received by May 24, 2010.⁸ 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 April 14, 2010.⁹

CONCLUSION

The Board finds that, while appellant established that the incident occurred as alleged, she did not establish an injury in the performance of duty on April 14, 2010.

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

⁷ See *M.H.*, 59 ECAB 461 (2008); *Bill H. Harris*, 41 ECAB 216 (1989).

⁸ The Board's review of a case is limited to evidence that was before the Office at the time of the May 24, 2010 decision. 20 C.F.R. § 501.2(c)(1).

⁹ See *T.S.*, Docket No. 09-2184 (issued June 9, 2010).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 24, 2010 is affirmed.

Issued: May 4, 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