United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 11-1885**
	)	**Issued: April 4, 2012**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS & BORDER PATROL, Buffalo, NY, Employer	)	

Appearances:
Henry E. Leinen, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 16, 2011 appellant, through her representative, filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated April 14, 2011 which denied her claim. 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 the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained a right foot injury in the performance of duty.

FACTUAL HISTORY

On June 4, 2010 appellant, then a 37-year-old customs and border patrol officer, filed a traumatic injury claim, alleging that on June 3, 2010 she developed a bump on the bottom of her

[1] 5 U.S.C. §§ 8101-8193.

right foot and experienced pain when walking and when putting pressure on the big toe. She noted that the cause of the injury was unknown but that she was working in the vehicle export office and was walking up and down stairs. Appellant did not stop work.

Appellant was treated in the emergency room on June 4, 2010 by Dr. Paul Juette, a Board-certified internist, for right foot pain which occurred after 12 hours of running up and down stairs. Dr. Juette diagnosed right foot pain and swelling and noted that an x-ray revealed no fracture. In a June 4, 2010 attending physician's report, he indicated with a checkmark "yes" that the condition was caused or aggravated by an employment activity and diagnosed tendinitis.

Appellant came under the treatment of Dr. Kenneth T. Goldstein, a podiatrist, beginning June 7, 2010, for right foot pain. In June 7 and 11, 2010 excuse slips, Dr. Goldstein noted treating appellant for a foot injury and advised that she would not work from June 7 to 24, 2010. In a June 7, 2010 attending physician's report, he advised that appellant injured her right ankle on June 3, 2010 and diagnosed right ankle contusion with possible ligamentous injury. Dr. Goldstein noted with a checkmark "yes" that the condition was caused by an employment activity. On June 21, 2010 he treated appellant for persistent right foot pain and recommended a metatarsal joint injection. In a June 25, 2010 report, Dr. Goldstein indicated that appellant had an inordinate amount of pain and swelling and required crutches for mobility. He diagnosed injury superficial abrasion to the foot and toes without infection and sesamoiditis. In attending physician's reports dated June 28 and July 2, 2010, Dr. Goldstein noted that appellant injured her right foot/ankle on June 3, 2010 and diagnosed right foot sesamoiditis with possible complex regional pain syndrome. He checked a box "yes" that appellant's condition was caused by work activity and she was disabled from June 7, 2010. Dr. Goldstein noted that appellant was not responding to conservative treatment and referred her to an orthopedist. On July 8, 2010 he noted that a right foot x-ray showed demineralization at and around the medial sesamoid consistent with possible aseptic necrosis.[2] In a July 8, 2010 attending physician's report, Dr. Goldstein diagnosed right foot sesamoiditis with possible aseptic necrosis. He checked a box "yes" that appellant's condition was caused or aggravated by employment activity and that appellant was disabled from June 7, 2010.

The employing establishment submitted a statement from Craig Olewine, appellant's supervisor, dated June 15, 2010. Appellant advised him on June 4, 2010 that she had a bump on the bottom of her foot with pain which started on June 3, 2010 after work. She attributed her foot pain to repeatedly walking up and down stairs while performing her duties in the Vehicle Export Office.

Appellant was evaluated by Dr. Christopher Ritter, a Board-certified orthopedic surgeon, on June 29, 2010, for a right foot injury she sustained at work on June 3, 2010. She reported going up and down stairs at work when she hit a stair wrong and injured the base of her toe. Right great toe range of motion was reasonable without significant pain except when the sesamoids were palpated. There was no instability or ecchymosis of the right great toe. Foot x-rays were essentially normal with no areas of fracture or arthritic degeneration. Dr. Ritter

[2] A June 17, 2010 right foot magnetic resonance imaging (MRI) scan revealed no metatarsal stress fracture; however, there was a possible sesamoid fracture or component of sesamoiditis. A June 29, 2010 right foot x-ray showed a small calcaneal spur.

diagnosed a great toe sprain consistent with a turf toe injury. He noted that she was disabled from her usual work until the next evaluation.

By letter dated July 14, 2010, OWCP advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit a statement describing how her injury occurred and also that her physician explain how her diagnosed condition was due to work factors.

In reports dated July 1 and 8, 2010, Dr. Goldstein diagnosed sesamoiditis and superficial abrasion to the foot and toes without infection. In a July 16, 2010 report, he noted that appellant sustained a right foot injury while walking up and down stairs at work on June 3. 2010. Dr. Goldstein diagnosed right foot sesamoiditis with possible aseptic necrosis. He returned appellant to work with restrictions. In attending physician's reports dated July 16 to August 13, 2010, Dr. Goldstein noted that she injured her right foot on June 3, 2010 and diagnosed right foot sesamoiditis and aseptic necrosis of the medial sesamoid. He checked boxes "yes" that appellant's condition was caused or aggravated by her work. Dr. Goldstein released her to sedentary work with minimal ambulation. On July 24, 2010 appellant presented with decreased right foot pain. Dr. Goldstein noted findings and previous diagnoses and opined that the incident she described was the competent medical cause of her injury. A July 24, 2010 right foot x-ray showed continued demineralization of the medial sesamoid. On July 26, 2010 Dr. Goldstein noted that she remained in a walking boot and continued to work under the same restrictions. In August 13, 2010 reports, he noted that she was doing well and walking in a regular shoe. Dr. Goldstein noted an x-ray revealed that medial sesamoid was almost completely gone with no malalignment. He diagnosed aseptic necrosis of the medial sesamoid. Dr. Goldstein returned appellant to work without restrictions and discharged her from his care.

In a September 10, 2010 decision, OWCP denied the claim finding that the evidence was insufficient to establish that the claimed events occurred as alleged. It also found that appellant submitted insufficient medical evidence regarding causal relation.

Appellant requested an oral hearing which was held on February 9, 2011. She submitted reports dated June 7 and July 15, 2010 from Dr. Goldstein. Appellant reported walking up and down stairs at work on June 3, 2010 and noted that she could not step on her foot the next day and thought she bruised the area. Dr. Goldstein diagnosed superficial abrasion to the foot and toes and noted that the incident appellant described was the competent medical cause of her injury. In a September 27, 2010 report, he noted treating her for a right foot injury sustained on June 3, 2010 after walking up and down stairs at work. Dr. Goldstein noted that an MRI scan revealed a possible fracture/osteonecrosis of the medial sesamoid which healed. He opined that the MRI scan and x-rays supported the diagnoses which were causally related to the trauma of the stairs to the bone.

Appellant provided a September 23, 2010 statement indicating that, on June 1, 3 and 4, 2010, her work duties required her to make multiple trips up and down a flight of concrete stairs. She noted that her coworker was on light duty and she was required to do the stairs on those days. On June 4, 2010 appellant had extreme pain in the big toe and a lump developed on the bottom of her foot and she sought treatment on June 4, 2010. She submitted an October 7, 2010 statement from Robert Rhodes, a coworker, who worked with appellant on June 3, 2010 and

noted that he did not witness appellant's injury but she reported hurting her foot that day. Also submitted was correspondence to her governor about her claim.

In a decision dated April 14, 2011, an OWCP hearing representative affirmed the September 10, 2010 decision finding that the medical evidence was insufficient.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 filed within the applicable time limitation of FECA, 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. 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.[3]

To determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4] The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[5]

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.[6] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

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[3] *Gary J. Watling*, 52 ECAB 357 (2001).

[4] *Michael E. Smith*, 50 ECAB 313 (1999).

[5] *Id*.

[6] *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

ANALYSIS

The Board finds that the evidence supports that on June 3, 2010 appellant was working in the vehicle export office and repeatedly climbed and descended stairs. Appellant provided a consistent history of the work activity and there is no evidence suggesting that she did not walk up or down stairs, as alleged. The Board finds, however, that the medical evidence is insufficient to establish that she sustained a right foot injury on or about June 3, 2010 causally related to repeated walking up and down stairs.

Dr. Juette treated appellant in the emergency room on June 4, 2010 for right foot pain which occurred after 12 hours of going up and down stairs. He diagnosed right foot pain and noted that an x-ray showed no fracture. In a June 4, 2010 attending physician's report, Dr. Juette diagnosed tendinitis and checked a box "yes" that appellant's condition was employment related. However, he provided no medical rationale in support of his conclusion on causal relationship. Dr. Juette did not explain the reasons how going up and down stairs caused or aggravated appellant's claimed right foot condition.[8] Consequently these reports are of diminished probative value and do not establish appellant's traumatic injury claim.

Dr. Goldstein submitted reports beginning June 7, 2010 in which he diagnosed conditions such as sesamoiditis and aseptic necrosis and checked a box "yes" that appellant's right condition is employment related. He did not provide a medical explanation of the reasons for his conclusion on causal relationship. The reports in which Dr. Goldstein supports causal relationship by checking a box "yes" are not sufficient to establish appellant's claim.[9] Dr. Goldstein also noted appellant's history of climbing up and down stairs at work on June 3, 2010 and offered the opinion that this incident was the competent medical cause of her injury. Again, he did not explain why such activity would result in a causal relationship to the diagnosed condition. Dr. Goldstein did not adequately explain why walking on stairs on or about June 3, 2010 was a competent cause or contributor to appellant's diagnosed right foot conditions.[10] On September 27, 2010 he noted that MRI scan findings of a possible fracture/osteonecrosis of the medial sesamoid which healed. Dr. Goldstein opined that the MRI scan and x-rays supported diagnoses which were causally related to the trauma of the stairs to the bone. He did not explain the medical reasoning, or rationale, that formed the basis of his conclusion on causal relationship. The Board finds that, although Dr. Goldstein provided some support for causal relationship in many of his reports, these reports are insufficient to establish the claim as he did not provide medical rationale explaining the basis of his conclusion regarding the causal relationship between appellant's right foot condition and the factors of employment.

In a June 29 2010 report, Dr. Ritter evaluated appellant for a right foot injury she sustained at work on June 3, 2010. Appellant reported going up and down stairs at work when she hit a stair wrong and injured the base of her toe. Dr. Ritter diagnosed a great toe sprain

[8] *See Alberta S. Williamson*, 47 ECAB 569 (1996) (the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value).

[9] *See id.*

[10] *See supra* note 7.

consistent with a turf toe injury; but did not sufficiently explain the reasons why climbing stairs on June 3, 2010 caused or aggravated a particular right foot condition.

The reports of diagnostic testing are insufficient to establish the claim as they do not specifically address causal relation. Consequently, the medical evidence is insufficient to establish a causal relationship between specific factors or conditions of employment and the diagnosed medical conditions.

Consequently, the medical evidence is insufficient to establish that the June 3, 2010 incident caused or aggravated a diagnosed medical condition.

On appeal, appellant asserts that she established fact of injury and noted that her condition, specifically possible fracture, osteonecrosis, could be caused by the trauma reported by appellant. As noted, she has not submitted sufficient medical evidence explaining how walking on stairs on or about June 3, 2010 incident caused or aggravated a diagnosed right foot condition.

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 failed to meet her burden of proof to establish that she sustained a right foot injury causally related to her June 3, 2010 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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