United States Department of Labor
Employees' Compensation Appeals Board

G.H., Appellant	)	
and	)	**Docket No. 11-2064**
	)	**Issued: May 8, 2012**
DEPARTMENT OF LABOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, Seattle, WA, Employer	)	

Appearances:
Appellant, pro se
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 September 15, 2011 appellant filed a timely appeal from an August 16, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on October 29, 2010.

FACTUAL HISTORY

On November 9, 2010 appellant, then a 52-year-old equal opportunity specialist, filed a traumatic injury claim alleging that she was leaving work at 3:00 p.m. on October 29, 2010 when

[1] 5 U.S.C. § 8101 *et seq.*

she heard a loud pop from her leg on her way to the elevator. The employing establishment controverted the claim on the grounds that she signed out at 3:00 p.m. and was no longer on duty at the time of the alleged incident. It also asserted that appellant had preexisting sarcoidosis.[2]

OWCP informed appellant in a November 18, 2010 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a factual statement detailing the October 29, 2010 incident and a medical report from a physician explaining how the purported incident caused or contributed to a diagnosed condition.

In a December 5, 2010 statement, appellant responded that she left her office at 3:00 p.m. on October 29, 2010. At approximately 3:01 p.m., before she entered the elevator, she heard a loud pop emanating from her right leg and was thereafter symptomatic.[3] Signed statements from appellant's daughters noted that she arrived home in pain and subsequently sought medical treatment. The injury was reported to a supervisor on November 1, 2010. Appellant noted that she sustained swollen feet sometime in August 2010,[4] but denied having a preexisting leg condition due to sarcoidosis.

In a November 30, 2010 letter, Leigh Jones, the employer's district director, remarked that appellant could have immediately reported the alleged incident to her supervisor, who was on duty until 5:30 p.m. on October 29, 2010 and that she later recounted that she injured her right ankle while rushing to catch a bus. Ms. Jones added that appellant previously requested a disability accommodation on August 25, 2010 on account of her sarcoidosis.[5]

Appellant submitted additional medical evidence. In an August 24, 2010 letter, Dr. Richard A. Kahlstrom, a Board-certified internist, detailed that appellant had pulmonary sarcoidosis and that the condition limited her ability to walk for long periods and necessitated frequent rest breaks.[6]

Dr. Patricia J. Russell, a Board-certified family practitioner, advised appellant to refrain from working for three days in a November 1, 2010 treatment note. She diagnosed right lower extremity joint pain in a November 1, 2010 radiology requisition form. Records from a nurse practitioner dated November 2 and 8, 2010 diagnosed work-related right knee injury and placed appellant off duty from November 1 to 12, 2010.[7]

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[2] Appellant resigned on April 8, 2011.

[3] An industrial injury report from appellant dated November 8, 2010, stated her belief that the sound originated from her right ankle.

[4] In a December 3, 2010 letter, Dr. Daniel W. Thompson, a Board-certified family practitioner, confirmed that appellant sustained bilateral foot edema sometime in August 2010 due to an adverse reaction to her medication. The condition resolved when this medication was discontinued.

[5] The case record contains August 25 and October 6, 2010 e-mails from Ms. Jones to appellant addressing this matter.

[6] July 14 and December 15, 2010 letters from registered nurses also confirmed sarcoidosis.

[7] A November 15, 2010 emergency department note from a nurse practitioner specified that appellant "apparently stepped off an elevator and twisted her [right] knee" approximately two weeks earlier.

A November 8, 2010 right knee x-ray obtained by Dr. Germaine R. Johnson, a Board-certified diagnostic radiologist, was unremarkable.

In a November 10, 2010 progress note, Dr. Mario G. Alinea, Jr., a Board-certified family practitioner, related that appellant "was getting into [an] elevator and twisted her knee" on October 29, 2010. He observed an antalgic gait and right knee tenderness on examination while a McMurray's test was equivocal. Dr. Alinea diagnosed right knee sprain.[8] An accompanying nursing note dated November 10, 2010 stated that appellant was "performing the essential functions of [her] job" when she was injured on October 29, 2010 and did not return to duty after the event. Activity prescription forms from Dr. Alinea dated November 10 and 16, 2010 placed her off duty from November 10 to 30, 2010.

Dr. Alinea reiterated in November 30, 2010 progress notes that appellant's right knee sprain occurred as she was entering an elevator on the employing establishment's premises on October 29, 2010 and was therefore work related. In a November 30, 2010 duty status report, he recommended an indefinite leave from work. After receiving a December 2, 2010 letter from Ms. Jones informing Dr. Alinea that, accommodations such as telework were available, he imposed the following job restrictions "from home" in a December 3, 2010 status report: continuous sitting and fine manipulation for seven hours and intermittent standing and walking for 30 minutes.[9]

In a December 15, 2010 progress note, Dr. Archie Adams, a Board-certified family practitioner, examined appellant and observed an antalgic gait, hamstring tenderness and an equivocal McMurray's test. He diagnosed right knee and leg sprain.[10] In a December 15, 2010 duty status report, Dr. Adams listed October 29, 2010 as the date of injury and advised appellant to refrain from working until January 2, 2011. He limited continuous sitting to between one and three hours, standing to less than one hour and walking to less than one hour and proscribed climbing, kneeling and twisting.

By decision dated December 30, 2010, OWCP denied appellant's claim, finding the evidence insufficient to establish that an October 29, 2010 employment incident occurred as alleged.

Following issuance of the December 30, 2010 decision, OWCP received additional medical evidence. In a December 29, 2010 duty status report, Dr. Adams opined that appellant was unable to perform her regular work "due to dizziness." A January 11, 2011 duty status from Dr. Alinea elaborated that she sustained dizziness due to her hypertension medication and removed her from duty until February 28, 2011.

[8] The original progress note listed a diagnosis of left knee and leg sprain. Based on a review of Dr. Alinea's subsequent records, including an amended November 10, 2010 progress note correcting this diagnosis, this was a clear typographical error.

[9] The record contains December 3 and 6, 2010 correspondences between appellant and Ms. Jones regarding Dr. Alinea's job restrictions. Appellant denied that she received clearance to return to work and declined Ms. Jones' telework offer. The employer consequently placed her on absence-without-leave status effective December 6, 2010.

[10] Dr. Adams reiterated his findings in a December 29, 2010 progress note.

Appellant requested an oral hearing, which was held on May 25, 2011. She testified that she was handling casework on October 29, 2010, which involved walking, lifting, stooping and copying. Later that afternoon, after appellant left the office and before she entered the elevator, she heard a loud pop coming from her ankle. Over the weekend she experienced pain throughout her entire leg. Appellant informed her supervisor on the morning of November 1, 2010 that she was unable to work. She returned on March 1, 2011, but resigned after she received a proposal of termination from Ms. Jones.[11] Appellant suggested that Ms. Jones improperly contacted Dr. Alinea in order to adjust her job restrictions.

On August 16, 2011 OWCP's hearing representative affirmed the December 30, 2010 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[12] including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.[13] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[14]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time and place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[15]

An employee's statement 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.[16] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of

[11] Appellant indicated that she filed a complaint alleging retaliation with the Equal Employment Opportunity Commission. She also alleged a violation of the Privacy Act. The case record does not contain a final decision or finding of wrongdoing.

[12] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[13] *R.C.*, 59 ECAB 427 (2008).

[14] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[15] *T.H.*, 59 ECAB 388 (2008).

[16] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

the claim. Circumstances such 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, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[17]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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.[18]

ANALYSIS

The Board finds that appellant did not establish that she sustained a right lower extremity condition in the performance of her duties as an equal opportunity specialist on October 29, 2010 because her claim lacked specificity regarding the mechanism of injury.[19]

In her Form CA-1, appellant alleged that she heard a loud pop emanating from her leg around at 3:00 p.m. on October 29, 2010 as she was leaving work and heading toward the elevator.[20] On November 18, 2010 OWCP informed her that additional factual evidence was needed to establish her traumatic injury claim and gave her 30 days to submit information clarifying the details of the purported incident. In response, appellant provided a December 5, 2010 statement pointing out that the sound had originated from her right leg. Following the December 30, 2010 decision denying her claim, she testified during the May 25, 2011 oral hearing that she heard a loud pop coming from her ankle after she left the office and before she entered the elevator on October 29, 2010. Prior to appellant's departure, she had been walking, lifting, stooping and copying all day.

While appellant identified the approximate time and place of injury, her account of the manner in which she injured her left lower extremity was vague and incomplete.[21] Although she mentioned that she walked, stooped, lifted items and copied documents during her October 29,

[17] *Betty J. Smith*, 54 ECAB 174 (2002).

[18] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[19] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006).

[20] Appellant did not indicate that she had left the employment premises before the alleged injury occurred and evidence from the employing establishment does not clearly indicate that she had left the premises before the claimed injury occurred. *See Luis A. Velez*, 56 ECAB 592 (2005) (generally, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employee is going to or from work, before and after working hours or at lunch time, are compensable). However, for the reasons noted, *infra*, appellant has not established that the October 29, 2010 work incident occurred as alleged.

[21] *Supra* note 19 at 368.

2010 shift, she did not assert that this employment activity led to her injury. Moreover, the medical histories of record contain such inconsistencies as to cast serious doubt upon the validity of the claim. Dr. Alinea's November 10 and 30, 2010 progress notes stated a history that appellant sprained her right knee as she was entering an elevator. A November 15, 2010 emergency department note from a nurse practitioner specified that appellant twisted the right knee as she was stepping out of the elevator. None of the medical evidence diagnosed or otherwise referred to a right ankle injury.[22] Therefore, in view of these factual deficiencies, the Board finds that appellant failed to establish a *prima facie* claim.

Appellant contends on appeal that the medical evidence sufficiently established that factors of her federal employment caused or aggravated a diagnosed condition. However, since she did not meet her burden of proof to establish the occurrence of an employment incident, it is not necessary to consider the medical evidence with regards to causal relationship.[23] Appellant may submit new evidence or argument as part of a formal 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 did not establish that she sustained a traumatic injury in the performance of duty on October 29, 2010.

[22] *See John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition).

[23] *D.F.*, Docket No. 10-1774 (issued April 18, 2011).

ORDER

IT IS HEREBY ORDERED THAT the August 16, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2012
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