United States Department of Labor
Employees' Compensation Appeals Board

L.A., Appellant	)	
and	)	**Docket No. 09-250**
	)	**Issued: July 27, 2009**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Middletown, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 3, 2008 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated June 25 and October 6, 2008 that denied her claim. 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 employment-related injury on May 1, 2008.

FACTUAL HISTORY

On May 2, 2008 appellant, then a 55-year-old sales and service associate, filed a Form CA-1, traumatic injury claim, alleging that on May 1, 2008 she injured her left side and back when she fell from her chair at work. She did not stop work. Jennifer Rodriguez, customer service supervisor, advised that appellant was receiving therapy for a back problem prior to this

incident. Ruth Youngs, a coworker, provided a statement noting that on May 1, 2008 she heard a noise and saw appellant climbing up to her chair.

By letter dated May 19, 2008, the Office informed appellant of the evidence needed to support her claim. Appellant was asked to provide a statement describing the claimed incident and any medical treatment including a detailed report from her physician. She did not respond.

In a June 25, 2008 decision, the Office denied appellant's claim. It found that she did not establish a factual basis for her claim or any medical evidence to support an injury.

On July 2, 2008 appellant requested a review of the written record. In reports dated April 15 and June 11, 2008, Dr. Daniel P. Tomlinson, an orthopedic surgeon, diagnosed bilateral iliotibial band syndrome and prescribed physical therapy.[1] In a May 1, 2008 report, Dr. Albert Melin, a chiropractor, advised that appellant injured her back, left buttock, hip, neck and left arm when she fell from a chair at work. He provided findings on physical examination and diagnosed low back pain, rule out lumbar disc pathology, rule out lumbar radiculopathy; neck pain, rule out cervical disc pathology, rule out cervical radiculopathy; left shoulder pain, rule out internal derangement; and left hip pain, rule out internal derangement. Dr. Melin advised that appellant would undergo chiropractic treatment three times weekly for four to six weeks. In a June 30, 2008 report, he reiterated his findings and conclusions. On June 30, 2008 Dr. Kevin Trapp, a Board-certified orthopedic surgeon, advised that appellant was under his care for bilateral hip pain. Appellant also submitted treatment notes with an illegible signature dated May 1 to August 28, 2008.

By decision dated October 6, 2008, an Office hearing representative accepted the May 1, 2008 incident at work but denied the claim on the grounds that the medical evidence submitted was insufficient to establish causal relation.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

Section 10.5(ee) of Office regulations defines 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

[1] Iliotibial band syndrome is defined as a syndrome of knee pain that may result from inflammation due to mechanical friction of the iliotibial band and the lateral femoral epicondyle. *Stedman's Medical Dictionary* (2006).

[2] 5 U.S.C. §§ 8101-8193.

[3] *Gary J. Watling*, 52 ECAB 278 (2001).

workday or shift.[4] To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[5]

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] Rationalized medical evidence is medical evidence 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. 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.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of the Act. A chiropractor is not considered a physician under the Act unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.[9]

ANALYSIS

The Office accepted that the May 1, 2008 incident occurred in the performance of duty when appellant fell from a chair at work. The Board finds, however, that the medical evidence of record is insufficient to establish that she sustained an injury due to the accepted incident.

Dr. Tomlinson diagnosed bilateral iliotibial band syndrome and provided for physical therapy. Dr. Trapp advised that appellant was under his care for bilateral hip pain. However,

[4] 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

[5] *Gary J. Watling, supra* note 3.

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

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

[8] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[9] *Mary Ceglia*, 55 ECAB 626 (2004). Office regulations define subluxation to mean an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae, which must be demonstrated on x-ray. 20 C.F.R. § 10.5(bb).

neither physician addressed the relationship of the diagnosed conditions to the incident in this case. 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.[10] Moreover, the reports of Dr. Melin, a chiropractor, are insufficient to establish appellant's claim. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.[11] Dr. Melin did not diagnose a spinal subluxation based on x-ray. Therefore, his reports are of no probative medical value.[12] Regarding the illegible reports, they do not constitute probative medical evidence. A medical report may not be considered as probative evidence if there is no indication that the person completing the report is a physician as defined at section 8101(2) of the Act.[13]

To meet his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether a medical condition was caused by the employment incident.[14] The issue of whether appellant sustained injury on May 1, 2008 is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history.[15] Appellant did not submit sufficient medical evidence to establish that the accepted incident at work caused an injury.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment injury on May 1, 2007.

[10] *Willie M. Miller*, 53 ECAB 697 (2002).

[11] 5 U.S.C. § 8101(2); *see Paul Foster*, 56 ECAB 208 (2004).

[12] *See Michelle Salazar*, 54 ECAB 523 (2003). The Board further notes that Dr. Melin diagnosed low back pain, neck pain, left shoulder pain and left hip pain. Pain is a symptom, not a compensable medical diagnosis. *C.F.*, 60 ECAB ___ (Docket No. 08-1102, issued October 10, 2008).

[13] *R.M.*, 59 ECAB ____ (Docket No. 08-734, issued September 5, 2008).

[14] *Gary J. Watling*, *supra* note 3.

[15] *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 6, 2008 is affirmed.

Issued: July 27, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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