United States Department of Labor
Employees' Compensation Appeals Board

R.E., Appellant	)	
and	)	**Docket No. 07-1502**
	)	**Issued: June 7, 2007**
DEPARTMENT OF VETERANS AFFAIRS, REGIONAL OFFICE, Phoenix, AZ, 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
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 8, 2007 appellant filed a timely appeal of the November 13, 2006 merit decision of the Office of Workers' Compensation Programs, which denied her claim for an employment-related traumatic injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on September 5, 2006.

FACTUAL HISTORY

Appellant, a 49-year-old veterans service representative, filed a September 5, 2006 claim alleging that she injured her left knee and ankle earlier that day. The injury allegedly occurred when she stumbled and fell while walking down stairs. Two managers, Dave Luzi and Keith Hancock, reported witnessing appellant running in the office less than an hour after her alleged injury.

Although appellant represented to the Office that she did not have any similar disability or symptoms prior to the alleged September 5, 2006 incident, the record indicated that she previously sustained an employment-related left knee injury on August 25, 2004. Her prior claim, file number 13-2112944, was accepted for chondromalacia patella. Additionally, on July 26, 2006 appellant received treatment for a left knee injury that reportedly occurred a few weeks earlier when she was exercising on a treadmill and just four days prior to her claimed September 5, 2006 injury, appellant was seen by Dr. Richard J. Emerson for an unspecified left ankle injury. At that time, Dr. Emerson recommended obtaining an x-ray and a magnetic resonance imaging (MRI) scan of the left ankle to rule out a stress fracture of the lateral malleolus.

On September 8, 2006 Dr. Emerson excused appellant from work due to left knee and left ankle pain. In a September 15, 2006 report, he noted that appellant claimed to have injured herself on "[August 5, 2006]" when she fell down stairs at work. Appellant reportedly landed directly on her left knee and twisted her ankle. She experienced immediate pain and swelling and had difficulty ambulating. Dr. Emerson noted that a recent imaging study revealed Grade 3 chondrosis of the left knee.[1] He also reported that a left ankle MRI scan showed a longitudinal split-type tear involving the peroneous brevis and peroneous longus tendons, with surrounding peritendinous edema. The ankle MRI scan also revealed a Grade 1 injury to the anterior talofibular ligament and an osteochondral injury on the medial aspect of the talar dome. Dr. Emerson stated that there was a causal relationship between the diagnosed conditions and factors related to appellant's employment.

On September 18, 2006 Dr. Emerson diagnosed left longitudinal tear involving the malleolar and inframalleolar brevis tendons, which he attributed to appellant falling down the stairs at work.

Dr. Mark D. Campbell, a Board-certified orthopedic surgeon, examined appellant on September 20, 2006. Appellant told Dr. Campbell that she had fallen down stairs on September 5, 2006 and experienced immediate pain in the left ankle. It was not until later that she noticed increased pain in the left knee. In addition to conducting a physical examination, Dr. Campbell reviewed recent x-rays and MRI scans of appellant's left knee and ankle. He noted that the left knee was benign and the left ankle showed some involvement of the peroneal tendon, but there was no indication of a complete tear or rupture. Dr. Campbell's assessment was left ankle pain and he excused appellant from work for four weeks.

On October 18, 2006 the Office accepted appellant's claim for left ankle strain. However, on its own motion the Office reopened appellant's case and based upon further review, rescinded acceptance of the claim by decision dated October 25, 2006. Two days later, the Office set aside the October 25, 2006 decision and advised appellant that the claim remained open for medical treatment for the accepted left ankle strain. Several weeks later, the Office again reopened the case on its own motion and rescinded acceptance of the claim by decision

[1] Dr. Robert Allen interpreted a September 11, 2006 left knee MRI scan as revealing Grade 3 chondromalacia patella, which was reportedly unchanged from a prior MRI scan dated July 27, 2006. The MRI scan report noted that appellant "[fell down stairwell last week.]"

dated November 13, 2006. The Office found that appellant failed to establish that she sustained an injury as alleged.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

To determine if an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[4] The second component is whether the employment incident caused a personal injury.[5] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[6]

ANALYSIS

After initially accepting appellant's claim for left ankle strain, the Office rescinded acceptance of the claim on November 13, 2006. The Act authorizes the Office to reconsider on its own motion a decision for or against compensation. The Office may initiate such an action at any time.[7] In rescinding acceptance, the Office explained that upon further examination of the record there were some factual discrepancies that called into question whether appellant injured

[2] 5 U.S.C. § 8101 *et seq*. (2000).

[3] 20 C.F.R. § 10.115(e), (f) (2006); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and her employment must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, to be considered rationalized, the physician must express his or her opinion in terms of a reasonable degree of medical certainty, and it must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the employment incident or implicated employment factors. *Id.*

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Shirley A. Temple*, 48 ECAB 404, 407 (1997). The fact that the etiology of a disease or condition is unknown or obscure does not relieve an employee of the burden of establishing a causal relationship by the weight of the medical evidence nor does it shift the burden of proof to the Office to disprove an employment relationship. *Judith J. Montage*, 48 ECAB 292, 294-95 (1997).

[7] 5 U.S.C. § 8128(a); *see also* 20 C.F.R. § 10.610; *Delphina Y. Jackson*, 55 ECAB 373, 376 (2004) (the Office must provide a clear rationale for rescinding acceptance of a claim).

herself while falling down at work on September 5, 2006. The Office further explained that the medical evidence, particularly the reports provided by Drs. Emerson and Campbell, was insufficient to establish a causal relationship between appellant's left lower extremity condition and the alleged September 5, 2006 employment incident. The Board finds that the Office provided a clear rationale for rescinding acceptance of the claim.

On the question of causal relationship, Dr. Emerson was the only physician who attributed appellant's left ankle injury to her alleged fall at work, which he reported occurred on August 5, 2006. Dr. Emerson neglected to explain how appellant's fall at work caused or contributed to what he diagnosed as a left longitudinal tear of the malleolar and inframalleolar brevis tendons.[8] Furthermore, Dr. Emerson's September 15 and 18, 2006 reports did not discuss or even mention appellant's prior history of injury involving both the left knee and left ankle. Thus, his opinion on causal relationship was neither supported by medical rationale nor based on a complete factual and medical background. While earlier treatment records indicate that Dr. Emerson was clearly aware of appellant's prior injuries, he made no attempt to reconcile those injuries with the injury she allegedly sustained as a result of a September 5, 2006 fall at work. As the record does not include rationalized medical evidence demonstrating a causal connection between the claimed left lower extremity condition and appellant's employment, the Office properly denied the claim.

CONCLUSION

Appellant failed to establish that she sustained an injury in the performance of duty on September 5, 2006.

[8] When Dr. Campbell reviewed appellant's recent left ankle MRI scan, he did not find evidence of a complete tear or rupture of the tendon.

ORDER

IT IS HEREBY ORDERED THAT the November 13, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 7, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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