

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

M.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, Ohio, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 09-1102
Issued: November 6, 2009**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 17, 2009 appellant filed a timely appeal from a February 20, 2009 merit decision of the Office of Workers' Compensation Programs' Branch of Hearings and Review affirming an August 1, 2008 merit decision. 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 sustained an injury in the performance of duty on May 7, 2008.

FACTUAL HISTORY

On June 23, 2008 appellant, a 40-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she tripped and fell while delivering mail on May 7, 2008, sustaining hip strain. The employing establishment controverted her claim. Appellant's supervisor stated that she was on leave until May 24, 2008, that when appellant returned to duty she mentioned hip

pain to her, but did not mention the incident until June 23, 2008; that she waited for six weeks to file the claim, and that she could not remember the exact address where she allegedly fell.

Appellant submitted a report dated June 20, 2008, signed by Dr. Blazenska Skugor, a Board-certified internist, which noted her history of injury as “while delivering mail, tripped on raised concrete, stumbled forward and landed hard on right leg.” Dr. Skugor diagnosed lumbar strain, sciatica and right hip and knee pain. X-rays of appellant’s hip and spine revealed no abnormality.

By decision dated August 1, 2008, the Office denied appellant’s claim because the evidence of record was insufficient to establish that the claimed medical condition was causally related to the identified employment incident.

On August 21, 2008 appellant, through her attorney, requested a hearing.

In August 8 and 22, 2008 notes, Dr. Skugor reviewed appellant’s history of injury, reviewed her subjective complaints and proposed a course of treatment. He opined that it was “reasonable to believe that [it] is possible that [appellant’s] back pain is related to or aggravated by her tripping accident.”

On September 3, 2008 Dr. Kristine Blackham, a Board-certified diagnostic radiologist, reported findings following x-rays of appellant’s lumbar spine. She diagnosed minimal degenerative changes.

In a September 25, 2008 report, Dr. Daniel W. Koontz, a Board-certified neurologist, noted appellant’s history that she developed pain in her right leg four months prior after tripping and landing on her leg. He diagnosed a small central disc bulge but offered no opinion regarding the cause of the condition.

Appellant submitted notes concerning appointments attended between July 18 through October 24, 2008 and diagnostic tests.

Appellant submitted a November 14, 2008 report in which Dr. Sami Moufawad, a Board-certified physiatrist, reported findings on examination and diagnosed right lumbar radiculopathy at the L5 level, lumbar disc bulge and myofascial pain.

A hearing was conducted on December 4, 2008 at which appellant and her attorney were present. She testified that she had fallen on more than one occasion while delivering mail, and that she waited to file the claim because she believed that her hip pain would resolve itself, as it had in the past.

By decision dated February 20, 2009, the hearing representative modified the Office’s August 1, 2008 decision denying appellant’s claim. He found that appellant had not established that the alleged May 7, 2008 “injury” occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of the claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation, that an injury was sustained while 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.² These are essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.⁴ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

ANALYSIS

The hearing representative found that appellant had not established that she sustained an "injury" in the time, place and manner alleged. The record reflects that appellant alleged that her injury occurred after tripping and falling while delivering mail on May 7, 2008. The employing establishment controverted her claim because her supervisor was on leave for several weeks following the alleged incident and she did not immediately report the injury to her supervisor, upon the supervisor's return or immediately file a claim. Appellant's supervisor also noted that appellant could not remember the exact address where the fall occurred. The Office initially determined that the trip and fall incident occurred as alleged, but the hearing representative found that she had not established that the "injury" occurred as alleged. Whether appellant sustained the "incident" as alleged or sustained an "injury" as alleged are two distinct questions. As there is no evidence of record disputing that the employment incident occurred as alleged, she has established that she did trip and fall during her employment. 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.⁶ The only remaining issue then is whether this incident caused a personal injury.

¹ 5 U.S.C. §§ 8101-8193.

² C.S., 60 ECAB ___ (Docket No. 08-1585, issued March 3, 2009).

³ S.P., 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁵ *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

Appellant's burden is to demonstrate that the identified employment incident caused a personal injury. Causal relationship is a medical issue that can only be proven through production of rationalized medical opinion evidence.⁷ The Board finds the evidence of record insufficient to satisfy appellant's burden of proof and, therefore, appellant has not established that she sustained an injury in the performance of duty on May 7, 2008.

The relevant medical evidence of record consists of reports and notes from Drs. Blackham, Moufawad and Skugor. These reports and notes are of little probative value on the issue of causal relationship as they lack a rationalized opinion on the causal relationship between the conditions they diagnosed and the identified May 7, 2008 employment incident. Although Dr. Skugor opined that it was "reasonable to believe that [it] is possible that [appellant's] back pain is related to or aggravated by her tripping accident[.]" this is an equivocal statement and, therefore, is of diminished probative value.⁸ As such, these reports are insufficient to satisfy her burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.⁹ Appellant has not submitted rationalized medical opinion evidence establishing that the identified employment incident caused a medically diagnosed personal injury and, therefore, has not satisfied her burden of proof.

CONCLUSION

The Board finds that appellant did not satisfy her burden of proof to establish that she sustained an injury in the performance of duty on May 7, 2008.

⁷ The hearing representative mistakenly found that appellant had not established that she sustained an injury at the time, place and in the manner alleged. The record reflects that appellant alleged that her injury occurred after tripping and falling while delivering mail. The medical evidence of record supports her allegation concerning the time, place and manner of the alleged injury. While the employing establishment controverted appellant's claim it did not controvert her assertion that this incident occurred as alleged. As there was no evidence of record demonstrating that the alleged employment incident did not occur as alleged, appellant has, in fact, established that she tripped and fell. The only remaining issue then is whether this incident caused a personal injury.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.3(g) (April 1993).

⁹ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

IT IS HEREBY ORDERED THAT the February 20, 2009 and August 1, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 6, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board