United States Department of Labor
Employees' Compensation Appeals Board

C.E., Appellant	)	
and	)	**Docket No. 10-2328**
	)	**Issued: June 22, 2011**
DEPARTMENT OF COMMERCE, CENSUS BUREAU, San Juan, PR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 20, 2010 appellant filed a timely appeal from an August 20, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] 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 met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on May 24, 2010.

FACTUAL HISTORY

On May 26, 2010 appellant, then a 39-year-old crew leader assistant, filed a traumatic injury claim alleging that she sustained bilateral knee and left hand injuries on May 24, 2010 when she stumbled on a piece of wood and fell while on duty. She stopped work on

[1] 5 U.S.C. § 8101 *et seq.*

May 27, 2010 and returned to work on July 14, 2010. A blank duty status report was received with the claim.

The Office informed appellant in a July 14, 2010 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit medical reports describing the history of injury, examination results, diagnosis and course of treatment and offering a physician's reasoned opinion as to how the purported work incident caused or aggravated the injury.[2]

A June 7, 2010 attending physician's report from Dr. Edwin I. Lugo Lugo, an orthopedic surgeon, noted that appellant had an unspecified knee sprain on May 24, 2010. A subsequent July 7, 2010 attending physician's report from Dr. Lugo Lugo clarified that appellant fell on May 24, 2010, sustained trauma to the knees and the fifth digit of the right hand and would be able to return to light duty on July 8, 2010. In both reports, he checked the "yes" box in response to a form question asking whether her condition was employment related, but did not provide any explanation. Dr. Lugo Lugo indicated in a June 7, 2010 work capacity evaluation form that appellant was unable to perform her usual job duties and had not reached maximum medical improvement.[3]

X-ray reports dated June 4, 2010 from Dr. Frank Kolodziej, a radiologist, revealed no physical abnormalities of the bilateral knees and left hand.[4] In June 15, 2010 magnetic resonance imaging (MRI) scan reports from Dr. Kolodziej, appellant exhibited a lateral femoral condyle contusion of the left knee and medial meniscal tearing of the right knee.

By decision dated August 20, 2010, the Office denied appellant's claim, finding the medical evidence insufficient to demonstrate that her May 24, 2010 fall caused bilateral knee and left hand injuries.

LEGAL PRECEDENT

An employee seeking compensation under the Act has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[5] including that she is an "employee" within the meaning of the Act and that she filed her claim within the applicable time limitation.[6] The employee must also establish that she sustained an

[2] The Office noted that appellant's claim was not fully processed as it was received as a simple and uncontroverted case resulting in minimal or no time lost from work and payment was approved for limited medical expenses without formal adjudication.

[3] The Board points out that each of Dr. Lugo Lugo's records contained significant sections of illegible handwriting.

[4] A June 4, 2010 x-ray of appellant's right hand showed degenerative changes of the distal interphalangeal joint of the fifth digit.

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

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

injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[7]

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, 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.[8]

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.[9]

ANALYSIS

The evidence supports that appellant stumbled on a piece of wood and fell on May 24, 2010. However, she did not furnish sufficient medical evidence showing that this work incident caused or contributed to bilateral knee and left hand injuries.

Dr. Lugo Lugo remarked in a June 7, 2010 report that appellant sprained her knee on May 24, 2010. He later added in a July 7, 2010 report that appellant fell on May 24, 2010 and injured her knees and right hand. Although Dr. Lugo Lugo correctly noted the date and mechanism of the injury, he failed to provide medical rationale explaining how stumbling on a piece of wood and falling pathophysiologically caused appellant's condition.[10] While he twice supplied affirmative checkbox responses to a form report question asking whether appellant's condition was employment related, such responses without further explanation or rationale were of diminished probative value.[11] Dr. Lugo Lugo's June 7, 2010 work capacity evaluation form did not address the cause of appellant's condition. Likewise, Dr. Kolodziej's diagnostic reports are of limited probative value as they offered no opinion regarding the cause of appellant's injuries.[12] These reports are insufficient to establish appellant's claim.

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

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

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

[10] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[11] *See Alberta S. Williamson*, 47 ECAB 569 (1996) (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).

[12] *See J.F.*, Docket No. 09-1061 (issued November 17, 2009) (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).

Appellant has not submitted a medical report in which a physician explains the reasons why the May 24, 2010 incident caused or aggravated a knee or left hand condition. In the absence of well-reasoned medical opinion explaining the causal relationship between the May 24, 2010 incident and her bilateral knee and left hand condition, appellant failed to meet her burden.[13]

CONCLUSION

The Board finds that appellant did not establish that she sustained a traumatic injury in the performance of duty on May 24, 2010.

ORDER

IT IS HEREBY ORDERED THAT the August 20, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 22, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[13] The Board notes that appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c). This, however, does not preclude appellant from having such evidence considered by the Office as part of a formal written request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.