United States Department of Labor
Employees' Compensation Appeals Board

JOHN E. LAPINSKI, Appellant	)	
	)	**Docket No. 05-1259**
and	)	**Issued: October 7, 2005**
	)	
U.S. POSTAL SERVICE, WARREN POST OFFICE, Warren, MI, Employer	)	

Appearances:
Ronald Watson, 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
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On May 23, 2005 appellant filed an appeal of a merit decision of the Office of Workers' Compensation Programs dated August 3, 2004 denying his claim for fact of injury, and a March 28, 2005 nonmerit decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has merit jurisdiction over the fact of injury issue and the denial of reconsideration.

ISSUES

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on June 21, 2004 as alleged; and (2) whether the Office properly denied appellant's January 26, 2005 request for a merit review. On appeal, appellant, through his authorized representative, contended that even if the Office did not accept an injury resulting from the accident, that the Office should have authorized the emergency room treatment and reimbursed his expenses. Appellant also asserted that the evidence submitted on reconsideration was sufficient to warrant a merit review of his claim.

FACTUAL HISTORY

On June 21, 2004 appellant, then a 57-year-old letter carrier, submitted a claim for traumatic injury (Form CA-1) for injuries sustained in a motor vehicle accident that day while on his mail delivery route. He recalled that he was rear-ended when stopped at a traffic light, causing him to hit the car in front of him. Appellant stated that he "hit [his] head and felt dizzy." The employing establishment confirmed that appellant was injured in the performance of duty, but indicated that they might controvert the claim pending receipt of medical evidence. The employing establishment also noted that, although appellant received medical care on June 21, 2004, no medical expenses were incurred and the claim should be processed as a "no time lost" incident. There is no Form CA-16 or other authorization for medical examination or treatment of record.

An employing establishment accident report showed that at approximately 12:30 p.m. on June 21, 2004, appellant had stopped his postal vehicle at a traffic light, was struck from behind by a second vehicle, causing him to hit the rear of the vehicle in front of him. The report noted that appellant struck his head and was "jolted around" during the incident. A police report provided a highly similar account of events.

Ambulance personnel transported appellant to a hospital emergency room, arriving at approximately 12:35 p.m. when his vital signs were recorded. He was admitted at 12:55 p.m. In a June 21, 2004 emergency room report, Dr. David Wagener, a medical resident and Dr. Anthony J. Affatato, an attending osteopath specializing in emergency medicine, stated that at 1:20 p.m., appellant complained that he was "dizzy" after a motor vehicle accident, "hit from behind then hit car in front of him. Head whipped forward then back. Got out of vehicle and felt dizzy." It was noted that appellant was reexamined at 2:10 p.m. with no dizziness or abnormal findings. Cervical spine x-rays were negative. Drs. Wagener and Affatato listed a diagnosis of "vagal presyncope s/p [status post] MVA [motor vehicle accident]." He was discharged at 2:17 p.m. that day. Discharge instructions, signed by a nurse and appellant, list a diagnosis of "Vasovagal Syncope" or fainting. These discharge instructions were not signed by a physician.[1]

In a June 28, 2004 letter, the Office advised appellant of the additional evidence needed to establish his claim, emphasizing the need for a definite diagnosis. The Office also requested additional information from the employing establishment.

By decision dated August 3, 2004, the Office denied the claim on the grounds that fact of injury was not established. The Office accepted that the June 21, 2004 motor vehicle accident occurred at the time, place and in the manner alleged. However, the Office further found that appellant submitted insufficient evidence to provide "a diagnosis which could be connected to" the June 21, 2004 accident.

[1] Appellant submitted a June 1, 2004 report from Dr. Bruce I. Kaczander, an attending podiatrist, noting restrictions due to an unspecified cause from June 1 to 12, 2004 and releasing appellant to full duty as of June 14, 2004. This report predates and appears unrelated to the June 21, 2004 accident.

In a January 26, 2005 letter, appellant requested reconsideration. He noted that he had not seen the Office's August 3, 2004 decision until that day and that he would seek additional medical reports. He submitted additional evidence.

In a June 21, 2004 emergency room intake report, a registered nurse noted that emergency personnel transported appellant to the hospital on a backboard, wearing a stiff-neck collar. June 21, 2004 x-rays of the cervical spine showed "no signs of recent traumatic osseous pathology." In a June 21, 2004 patient registration record, Drs. Affatato and Wegener diagnosed a "vagal response s/p [status post] MVA [motor vehicle accident], with final diagnoses codes of 780.2 denoting syncope and collapse and 780.4 denoting vertigo, nonspecific.

By decision dated March 28, 2005, the Office denied appellant's request for a merit review on the grounds that the new evidence received was insufficient to warrant a merit review. The Office found that the June 21, 2004 reports were "substantially similar" to evidence previously submitted, that "vagal response" was "not considered a valid diagnosis" and that presyncope or dizziness was a "symptom, not a diagnosis."[2]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 filed within the applicable time limitation 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."[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

In order to determine whether an employee actually sustained an 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition

[2] Following issuance of the Office's March 28, 2005 decision, appellant submitted additional evidence in stapled packets numbered 2 to 26. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Such evidence may be submitted to the Office pursuant to a request for reconsideration by the Office.

[3] 5 U.S.C. §§ 8101-8193.

[4] *Gary J. Watling*, 52 ECAB 278 (2001); *Leslie C. Moore*, 52 ECAB 132 (2000); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *Michael E. Smith*, 50 ECAB 313 (1999); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *Gloria J. McPherson*, 51 ECAB 441 (2000); *Elaine Pendleton*, *supra* note 4.

claimed, as well as any attendant disability and employment, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[7]

ANALYSIS

Appellant filed a claim for traumatic injury related to a June 21, 2004 motor vehicle accident in which his postal vehicle was struck from behind, causing him to collide with the car in front of him. In support of his claim, he submitted June 21, 2004 emergency room reports signed by Dr. Affatato, an attending osteopath, showing that he was transported to the hospital immediately after the accident due to complaints of dizziness and description of a whiplash injury. Dr. Affatato diagnosed vagal presyncope status post motor vehicle accident and vasovagal syncope or fainting. Appellant was discharged from the hospital at 2:17 p.m. that afternoon then reported to the employing establishment.

In its August 3, 2004 decision, the Office accepted that the June 21, 2004, accident occurred at the time, place and in the manner alleged, while appellant was in the performance of duty. The Office found, however, that the medical evidence did not contain a "diagnosis which could be connected to" that accident.

The Board finds that, while the June 21, 2004 emergency room records are insufficient to discharge appellant's burden of proof, they are of sufficient specificity and descriptiveness to require further development by the Office.[8] Dr. Affatato diagnosed vagal presyncope secondary to the motor vehicle accident, as well as vasovagal syncope. These are definite diagnoses made after a clinical examination and based on a complete, accurate history of injury. Also, these diagnoses were made within hours of the June 21, 2004 accident. There is no medical evidence to the contrary.[9]

On return of the case, the Office shall prepare a statement of accepted facts and forward it and the medical record to an appropriate specialist for review. If deemed necessary, the Office shall also refer appellant for examination. Because the Office made no findings as to whether appellant was entitled to reimbursement for ambulance, emergency room and other medical expenses, the case will be remanded for the Office to make appropriate findings on these issues.[10] Following this and all other development deemed necessary, the Office shall issue an appropriate decision in the case.

Regarding the second issue, the Board finds that as the case must be remanded to the Office for further development of the fact of injury issue, the issue of whether the Office properly denied appellant's request for a merit review regarding that same issue is moot.

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[7] *See* 20 C.F.R. § 10.115(e); *Gary Fowler*, 45 ECAB 365, 371 (1994).

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

[9] *Id.*

[10] *Jussara Arcanjo*, 55 ECAB ___ (Docket No. 03-1137, issued January 22, 2004).

CONCLUSION

The Board finds that the case is not in posture for a decision as appellant has submitted sufficient evidence to warrant further development on the issue of whether he sustained an injury in the accepted June 21, 2004 incident. As the case must be remanded for further development, the second issue regarding the Office's denial of appellant's request for a merit review is moot.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 28, 2005 and August 3, 2004 are set aside and the case remanded for further development consistent with this opinion.

Issued: October 7, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board