

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

C.C., Appellant)

and)

U.S. POSTAL SERVICE, WEST FARMS)
STATION, Bronx, NY, Employer)

**Docket No. 10-985
Issued: January 25, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 25, 2010 appellant filed a timely appeal of the December 4, 2009 merit decision of the Office of Workers' Compensation Programs denying his claim for a traumatic injury. 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 head, neck and back injuries on October 21, 2009, as alleged.

FACTUAL HISTORY

On October 21, 2009 appellant, then a 59-year-old letter carrier, filed a traumatic injury claim alleging that he sustained head, neck and back injuries on that date. He received medical treatment at St. Barnabas Hospital that day. On the claim form, Shanell Cordero, a supervisor, stated that appellant injured himself while in the performance of duty. In an October 21, 2009 accident report, she stated that appellant told her that he was attacked by an unidentified man while delivering a package on his route. The man took a package from him and fled the scene by

car. A police sergeant on the scene of the attack telephoned Ms. Cordero about the incident. Ms. Cordero arrived on the scene and accompanied appellant to St. Barnabas Hospital by ambulance. At the hospital, x-rays were taken of his head, neck and shoulder. Appellant was released from the hospital on the date of injury.

By letter dated October 30, 2009, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested a rationalized medical report from an attending physician which described results of examination and tests, a firm diagnosis, treatment provided and an opinion with medical reasons on whether the October 21, 2009 incident caused or aggravated his claimed conditions. Appellant was allowed 30 days to submit such evidence. He did not respond.

In a December 4, 2009 decision, the Office denied appellant's claim. It found the factual evidence sufficient to establish that the October 21, 2009 incident occurred at the time, place and in the manner alleged, but found that appellant failed to submit any medical evidence establishing an injury causally related to the accepted employment incident.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his 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 period of the Act, 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To determine whether a traumatic injury was sustained in the performance of duty, the Office must first resolve 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

¹ Following the issuance of the Office's December 4, 2009 decision, appellant submitted additional evidence to the Office. He also submitted additional evidence on appeal. The Board cannot consider evidence that was not before the Office at the time of the final decision. See 20 C.F.R. § 501.2(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003). Appellant may resubmit this evidence and any legal contentions to the Office accompanied by a formal written request for reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁵

Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized 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.⁶ Neither the fact that appellant's condition became apparent during a period of employment nor his belief that the condition was caused by his employment, is sufficient to establish a causal relationship.⁷

ANALYSIS

The Office accepted as factual that appellant was attacked on October 21, 2009 while in the performance of duty. While the traumatic incident is established, the Board finds that appellant failed to establish a causal relationship between any head, neck or back injuries and the October 21, 2009 employment incident. The Office's October 30, 2009 developmental letter specifically requested that he submit a rationalized medical opinion from his attending physician addressing whether the accepted employment incident contributed to the claimed injuries. Appellant did not submit any medical evidence in response to the Office's request. The Board finds, therefore, that he failed to meet his burden of proof.⁸

Although the Office denied appellant's claim of injury, it did not adjudicate the issue of whether he should be reimbursed for incurred medical expenses. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee with a properly executed CA-16 within four hours.⁹ Pursuant to section 8103 of the Act,¹⁰ however, the Office has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances.¹¹ It may exercise its discretion to authorize medical care even if a Form CA-16 has not been issued and

⁵ *Id.*

⁶ *Solomon Polen*, 51 ECAB 341 (2000).

⁷ *D.I.*, 59 ECAB 158 (2007); *Dennis M. Mascarenas*, 49 ECAB 215 (1997); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

⁸ *See Donald W. Wenzel*, 56 ECAB 390 (2005).

⁹ *Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (September 1995).

¹⁰ 5 U.S.C. § 8103.

¹¹ *Val D. Wynn*, *supra* note 9; 20 C.F.R. § 10.304.

the claim is subsequently denied. Payment in such situations is determined on a case-by-case basis.¹²

Appellant's supervisor verified that appellant was attacked by an unidentified person while delivering a package on his route. He was transported by ambulance to St. Barnabas Hospital where he received treatment that day. In denying appellant's claim, the Office failed to consider whether emergency or otherwise unusual circumstances were present such that reimbursement of medical expenses would be appropriate in this case. The Board finds that the circumstances of the case warrant additional development of this issue. The case will be remanded to the Office for further development, to be followed by the issuance of a *de novo* decision on this aspect of appellant's claim.

CONCLUSION

The Board finds that appellant failed to establish that he sustained head, neck or back injuries on October 21, 2009, as alleged. The case is remanded to the Office for adjudication of the issue of reimbursement of medical expenses related to his treatment on October 21, 2009.

¹² See *Thomas W. Keene*, 42 ECAB 623 (1991); see also Federal (FECA) Procedure Manual, *supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the December 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed in finding that appellant did not meet his burden of proof. The decision is set aside as to the issue of reimbursement of medical expenses. The case is remanded for further action consistent with this decision.

Issued: January 25, 2011
Washington, DC

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

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

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