United States Department of Labor
Employees' Compensation Appeals Board

J.O., Appellant	)	
and	)	**Docket No. 11-23**
	)	**Issued: September 23, 2011**
DEPARTMENT OF VETERANS AFFAIRS, CONNECTICUT HEALTHCARE SYSTEM, West Haven, CT, 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
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 4, 2010 appellant filed a timely appeal from a September 21, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act (FECA)[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 his burden of proof to establish that he sustained a traumatic injury in the performance of duty on July 13, 2010.

FACTUAL HISTORY

On August 9, 2010 appellant, then a 58-year-old housekeeping aide, filed a traumatic injury claim alleging that he was exiting an elevator on July 13, 2010 when the doors closed and

[1] 5 U.S.C. § 8101 *et seq.*

hit his forehead. An August 6, 2010 witness statement confirmed that he was attempting to exit the elevator when the door "quickly closed and hit him on the forehead." Appellant stopped work on July 13, 2010 and returned on July 15, 2010. The employing establishment did not controvert the claim.

OWCP informed appellant in an August 16, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit medical reports offering a physician's reasoned opinion as to how an employment incident caused or contributed to the purported injury. OWCP did not receive any such reports.[2]

By decision dated September 21, 2010, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that the July 13, 2010 elevator incident caused a head injury.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[3] including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.[4] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[5]

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 he 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.[6]

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

[2] In a separate August 16, 2010 letter, OWCP notified appellant that the circumstances of his case indicated that his injury may have been caused by a responsible third party and that he may be subject to FECA's subrogation provisions. *See* 5 U.S.C. §§ 8131-8132; 20 C.F.R. §§ 10.705-10.719.

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

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

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

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

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[7]

ANALYSIS

The evidence supports that appellant was exiting an elevator on July 13, 2010 when the doors closed and hit his forehead. The Board finds that he failed to provide any medical opinion evidence explaining how this employment incident contributed to a diagnosed medical condition. OWCP advised appellant in an August 16, 2011 letter to furnish such evidence within 30 days in order to establish his traumatic injury claim, but did not receive a response. In the absence of well-reasoned medical opinion on the issue of causal relationship, he failed to establish his *prima facie* claim for compensation.[8]

The Board notes that appellant submitted new evidence on appeal. However, the Board lacks jurisdiction to review evidence for the first time on appeal.[9] Appellant may submit new evidence or argument as part of a formal written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on July 13, 2010.

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

[8] *See Donald W. Wenzel*, 56 ECAB 390 (2005). This case does not fall into the category of cases set forth in OWCP procedures where a case can be accepted without a medical report where the injury is a minor one that can be identified on visual inspection by a lay person, the injury was witnessed or reported promptly with no dispute as to fact of injury, and no time was lost from work due to disability. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(1) (July 2000). Here, the procedures do not apply as appellant missed time from work.

[9] 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the September 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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