United States Department of Labor
Employees' Compensation Appeals Board

J.N., Appellant	)	
and	)	**Docket No. 12-1266**
	)	**Issued: November 27, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On May 15, 2012 appellant filed a timely appeal from a February 24, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 met his burden of proof to establish that he sustained a tooth root fracture and infection causally related to the June 2, 2011 employment incident.

FACTUAL HISTORY

On July 7, 2011 appellant, then a 40-year-old data collection technician, filed a traumatic injury claim alleging that on June 2, 2011 he cracked a tooth when he clenched his teeth as his vehicle collided with a deer. The employing establishment controverted his claim on the

[1] 5 U.S.C. § 8101 *et seq.*

grounds of insufficient medical evidence. It explained that when appellant's supervisor asked if he was hurt or needed medical treatment after the car accident, he stated that appellant was fine. The employing establishment noted that appellant did not file a claim until his dentist found a cracked tooth and referred him for surgery, which cost $6,000.00.

On July 11, 2011 OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional evidence to support his claim.

Appellant responded to OWCP's development letter in an undated statement. He related that on June 2, 2011 he hit a deer on the road but felt okay when he went to work. A few days after the accident, appellant noticed that his tooth was slightly loose and experienced discomfort. His dentist advised him to take ibuprofen and prescribed an antibiotic, but when the area around his tooth began to swell and the pain continued he scheduled an appointment with his dentist. During a June 20, 2011 dental examination, appellant's dentist took an x-ray and advised appellant to see an oral surgeon for a consultation. The oral surgeon advised appellant that he cracked the root of his tooth and broke the seal of his crown and would need surgery. Appellant noted that he never experienced an infection in any of his teeth until the accident occurred.

In an August 16, 2011 report, Dr. Keith A. Combs, a dentist, related that on June 9, 2011 appellant experienced pain in his tooth while he was travelling out of town with swelling the next day. He stated that appellant's symptoms were indicative of a root fracture caused by an injury such as a sudden impact. Dr. Combs opined that the fact that these symptoms started within a few days of the June 2, 2011 car accident and were not symptomatic before this incident was consistent with the conclusion that the impact could have aggravated this area.

Appellant submitted June 10, 2011 emergency room discharge instructions with an illegible signature. It indicated that he was treated that day and advised to follow up with his dentist.

In a decision dated August 26, 2011, OWCP denied appellant's claim finding that the medical evidence failed to establish that his cracked tooth and infection were causally related to the June 2, 2011 employment incident.

Following this decision, appellant submitted pictures of his vehicle after the June 2, 2011 car accident.

In a November 16, 2011 letter, appellant requested reconsideration. He stated that he was submitting new medical evidence from his dentist, because his dentist was not aware of the language that was required for his claim.

In a November 16, 2011 report, Dr. Combs again related the same history of injury he had related in his August 16, 2011 report. He concluded that, based on appellant's explanation to him and the evidence, appellant's symptoms were indicative of a root fracture caused by the June 2, 2011 incident when he hit a deer with his car.

By decision dated February 24, 2012, OWCP affirmed the August 26, 2011 decision denying appellant's traumatic injury claim finding that the medical evidence failed to establish that he sustained an injury in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence[3] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[4]

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.[5] 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.[6] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[7] An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.[8]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.[9] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[10] The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[11]

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[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[6] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[7] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[9] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[11] *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

Appellant alleged that on June 2, 2011 he sustained a cracked tooth and infection as a result of clenching his teeth during a collision with a deer in the performance of duty. OWCP accepted that the June 2, 2011 incident occurred in the performance of duty. It denied appellant's claim finding insufficient medical evidence to establish that his tooth fracture and infection were causally related to the June 2, 2011 employment incident. The Board finds that the medical evidence fails to establish that appellant sustained a tooth fracture and infection as a result of the June 2, 2011 employment incident.

Appellant submitted two reports from Dr. Combs. In an August 16, 2011 report, Dr. Combs provided an accurate history of injury and noted that appellant's symptoms were indicative of a root fracture caused by sudden impact. He opined that the fact that appellant was not symptomatic before the June 2, 2011 incident and that his symptoms started within a few days of the incident were consistent with the conclusion that the impact could have aggravated this area. The Board finds that Dr. Combs' opinion that the June 2, 2011 accident could have aggravated appellant's condition is speculative in nature and therefore is of diminished probative value.[12] Furthermore, while Dr. Combs' first report noted an "aggravation," he did not explain whether appellant had a preexisting condition and if so how the accepted employment incident would have aggravated such condition.

In a November 16, 2011 report, Dr. Combs stated that appellant's symptoms were indicative of a root fracture caused by the June 2, 2011 incident when he hit a deer with his car. Although he stated a conclusion, he did not provide adequate medical rationale to support his conclusion. Dr. Combs did not explain how grinding one's teeth would cause a root fracture. He did not explain why appellant would have only felt a loose tooth days after the fracture occurred. Such rationale is especially important in a case such as this, wherein the more contemporaneous medical evidence states a different opinion regarding causal relationship. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[13]

The Board finds that Dr. Combs failed to provide a rationalized medical opinion explaining how appellant's condition was causally related to the accepted June 2, 2011 incident. Dr. Combs reports are insufficient to establish appellant's claim.

The Board further finds that the hospital discharge instructions with an illegible signature are insufficient to establish appellant's claim. Reports that are unsigned or bear illegible signatures lack proper identification and cannot be considered probative medical evidence.[14] Because appellant has failed to provide sufficient medical evidence to establish that he sustained an injury in the performance of duty, the Board finds that he did not meet his burden of proof to establish his claim.

[12] *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

[13] *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (issued February 6, 2009).

[14] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

Appellant may submit new evidence or argument with a 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 meet his burden of proof to establish that he sustained a root fracture and infection as a result of the June 2, 2011 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 27, 2010
Washington, DC

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

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

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