

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

J.C., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
FEDERAL EMERGENCY MANAGEMENT
AGENCY, Alexandria, VA, Employer**

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**Docket No. 14-189
Issued: June 24, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 1, 2013 appellant filed a timely appeal from an August 27, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty causally related to a July 9, 2013 employment incident, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the August 27, 2013 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

On appeal, appellant contends that he never claimed that it was a rock that struck him and that he was a victim of a random crime and would not have been at the location of injury if not for his federal employment.

FACTUAL HISTORY

On July 17, 2013 appellant, then a 28-year-old project specialist, filed a traumatic injury claim (Form CA-1) alleging injury on July 9, 2013 as a result of being hit in the chest by someone in a passing vehicle while in the performance of duty. He stated that he was “taking [Global Positioning System] GPS of [a] work location ... [when he] started to turn and a passing vehicle in [a] car yelled ‘retard or reject’ and shortly after [he] felt something hit [him] in [his] chest.” Appellant attempted to locate the object that hit him, but it went into the surrounding vegetation and he was not able to find it.

Appellant submitted a Form CA-16 authorization for examination and/or treatment dated July 9, 2013 and a police report of the same date noting that “unknown actor(s) threw dirt or debris at the victim, striking him in the chest.” The police report stated that he “was struck by an unknown object thrown from a moving vehicle” while yelling out of the window and calling him a “retard.”

In a July 9, 2013 report, Dr. Anthony Yang, a Board-certified emergency medicine specialist, noted that appellant’s examination revealed a chest injury due to blunt trauma. He explained that most often these injuries resulted in bruised ribs, although minor rib fractures may not be seen on the initial x-rays. Dr. Yang stated that most broken or bruised ribs from blunt chest injuries were not serious and got better within one to three weeks with rest and mild pain medicine. He indicated that internal organs could be injured with blunt injury, so further examination might be needed. Dr. Yang ordered bed rest until the injury was healed.

In a July 18, 2013 letter, OWCP informed appellant of the deficiencies in his claim. It afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a July 9, 2013 report from Dr. Yang who diagnosed a chest contusion. Dr. Yang stated that appellant presented with right pectoral pain after being struck at work with a rock.

By decision dated August 27, 2013, OWCP denied appellant’s claim. It found that the evidence was not sufficient to establish the incident he described, stating “The circumstances surrounding the claimed incident are unclear and limited to your statement on the claim form and there is no other factual evidence to explain exactly what happened.”

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 FECA, that the claim was timely filed within the applicable time

³ 5 U.S.C. §§ 8101-8193.

limitation period of FECA, that an injury⁴ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁶

However, an employee’s statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.⁸

ANALYSIS

The Board finds that the evidence does not contain inconsistencies sufficient to cast serious doubt on appellant’s version of the employment incident. On his claim form, appellant noted an injury on July 9, 2013 as a result of being struck in the chest by an object tossed from a passing vehicle while in the performance of duty. He stated that he was taking GPS of a work location when he started to turn and an unidentified individual in a passing vehicle yelled “retard or reject” and he felt something hit him in the chest. Appellant attempted to locate the object that hit him, but it landed in the surrounding vegetation and he was not able to find it. The investigation police report dated July 9, 2013 noted that “unknown actor(s) threw dirt or debris at the victim, striking him in the chest,” and that appellant was struck by an unknown object thrown from a moving vehicle. Appellant sought medical treatment that day and submitted a

⁴ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁵ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ See *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

⁸ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

Form CA-16 authorization for examination and/or treatment dated July 9, 2013 completed by his employing establishment. The medical reports of record contain a history of injury consistent with his account of events. In a July 9, 2013 report, Dr. Yang stated that appellant's examination revealed a chest injury due to blunt trauma. On July 9, 2013 he diagnosed chest contusion and indicated that appellant presented with right pectoral pain after being struck with a rock while at work.

On appeal, appellant contends that he never claimed that it was a rock that hit him and that he was a victim of a random crime and would not have been at the location of injury if not for his federal employment. The Board finds that the evidence of record is sufficient to establish that he was struck in the chest by an object thrown from a passing motor vehicle while he was in the performance of duty conducting an onsite investigation. The Board finds that appellant's allegations have not been refuted by strong or persuasive evidence. The evidence of record is sufficient to establish that the claimed incident occurred at the time, place and in the manner alleged by appellant on July 9, 2013.⁹

The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the July 9, 2013 employment incident.¹⁰

The Board finds that this case is not in posture for decision on the issue of causal relationship.

Dr. Yang indicated that appellant's examination revealed a chest injury due to blunt trauma and diagnosed chest contusion. He advised that appellant presented with right pectoral pain after being struck at work. Dr. Yang explained that such injuries resulted in bruised ribs, although minor rib fractures may not be seen on the initial x-rays. He stated that most broken and bruised ribs from blunt chest injuries were not serious and got better within one to three weeks with rest and mild pain medicine. Dr. Yang indicated that internal organs could be injured with blunt injury, so further examination might be needed. He ordered bed rest until the injury was healed.

The Board notes that, while Dr. Yang's reports are not completely rationalized, they are consistent in finding that appellant was struck by an object in his chest and sustained a blunt trauma. The reports are not contradicted by any substantial medical or factual evidence of record.¹¹ While Dr. Yang's reports are not sufficient to meet appellant's burden of proof to establish a claim, they raise an inference of causal relationship between the claimed conditions and factors of his federal employment.¹²

⁹ See *Leonard T. Munson*, Docket No. 98-1478 (issued December 23, 1999).

¹⁰ *Id.*

¹¹ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

¹² *Id.*; see also *John J. Carlone*, 41 ECAB 354 (1989).

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹³

On remand, OWCP should develop the medical evidence as appropriate to determine whether the accepted incident caused an injury.¹⁴ After such further development as it deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision on the issue of causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision of the Board.

Issued: June 24, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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

¹³ See *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002); *William J. Cantrell*, 34 ECAB 1233 (1993); *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

¹⁴ Where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *Tracey P. Spillane*, 54 ECAB 608 (2003).