

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

G.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Newark, NJ, Employer**

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**Docket No. 11-90
Issued: June 8, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 14, 2010 appellant filed a timely appeal from an August 30, 2010 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ 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 an injury in the performance of duty on July 7, 2010.

FACTUAL HISTORY

On July 7, 2010 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained five stitches in his left leg, five stitches in his left arm and twisted his back when he missed a step on the stairs and fell. He sustained his injury, filed

¹ 5 U.S.C. § 8101 *et seq.*

his claim, stopped work and notified his supervisor on the same date. The employing establishment reported that the injury occurred while appellant was in the performance of duty.

In a July 7, 2010 duty status form, Dr. I. Bhatia, a treating physician, noted that appellant should not work until reevaluated on July 9, 2010. In a July 9, 2010 note, Dr. Bhatia reported that appellant was treated at Rahway Care Center and could return to work on July 12, 2010.

By letter dated July 28, 2010, the Office informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days. He did not submit any additional information.

By decision dated August 30, 2010, the Office denied appellant's claim on the grounds that there was no medical evidence that provided a diagnosis which could be connected to the accepted July 7, 2010 employment incident.²

LEGAL PRECEDENT

An employee seeking benefits under the Act 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; that an injury was sustained while in the performance of duty as alleged and that any disability 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 occupational disease.⁴

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.⁵ 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, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such

² The Board notes that appellant submitted additional evidence after the Office rendered its August 30, 2010 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 10.510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Elaine Pendleton*, *supra* note 3 at 1143.

a causal relationship.⁶ 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of 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.⁷

ANALYSIS

The Office found that the incident occurred as alleged on July 7, 2010. The issue, therefore, is whether appellant submitted sufficient medical evidence to establish that the employment incident caused a leg, arm or back injury. The Board finds that he did not submit sufficient medical evidence to support that he sustained an injury causally related to the July 7, 2010 employment incident.⁸ The medical evidence is deficient on two grounds: first, it fails to provide a firm diagnosis; and second, there is no narrative opinion on causal relationship between a diagnosed condition and the accepted employment incident.

In July 7 and 9, 2010 medical notes, Dr. Bhatia reported that appellant was treated at Rahway Care Center and could return to work on July 12, 2010. Dr. Bhatia did not provide any specific diagnosis or detail regarding appellant's medical condition. The reports do not establish causal connection in appellant's claim because the physician did not identify a medical condition. Thus, Dr. Bhatia's medical notes do not constitute probative medical evidence because they fail to provide a firm medical diagnosis and do not adequately explain the cause of appellant's injury.⁹

Appellant's belief that the work incident caused his medical problem is not in question, but that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. The record is devoid of rationalized medical evidence to establish a diagnosed medical condition causally related to the accepted July 7, 2010 employment incident. Appellant has failed to establish his claim.

Evidence submitted by appellant after the final decision cannot be considered by the Board. As noted, the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its decision.¹⁰ Appellant may submit additional evidence, together with a written request for reconsideration, to the Office within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

⁶ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ See *Robert Broome*, 55 ECAB 339 (2004).

⁹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁰ *Supra* note 2.

An award of compensation may not be based on surmise, conjecture or speculation.¹¹ To establish causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused his condition and, taking these factors into consideration, as well as findings upon examination and appellant's medical history, explain how these employment factors caused or aggravated any diagnosed condition, and present medical rationale in support of his opinion.¹² Where an appellant fails to submit such medical evidence, he or she has not established that the injury occurred as alleged.¹³

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a traumatic injury on July 7, 2010 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

¹¹ *D.D.*, 57 ECAB 734 (2006).

¹² *Supra* note 8.

¹³ *Tracey P. Spillane*, 54 ECAB 608 (2003); 5 U.S.C. § 8101(5).