United States Department of Labor
Employees' Compensation Appeals Board

M.D., Appellant	)	
and	)	**Docket No. 11-418**
	)	**Issued: September 27, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Iselin, NJ, Employer	)	

Appearances:
Robert Campbell, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 20, 2010 appellant filed a timely appeal from a June 22, 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 this case.

ISSUE

The issue is whether appellant has established an injury in the performance of duty on September 28, 2009.

FACTUAL HISTORY

On October 7, 2009 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he fractured fingers on his right hand in a fall on September 28, 2009. He indicated that the incident occurred at approximately 11:45 a.m.

[1] 5 U.S.C. § 8101 *et seq.*

The record contains an employing establishment accident report form with a narrative statement by a supervisor. The supervisor stated that he received a telephone call from the local police department indicating that an employee had passed out and fallen and was taken to the hospital. According to the supervisor, he went to investigate and stated that customers "had found the carrier passed out in the street."

In a letter dated October 23, 2009, OWCP advised appellant that he needed to submit additional factual and medical evidence regarding his claim. Appellant submitted a response dated November 13, 2009. With respect to the cause of his fall, he reported "constant harassment" by his supervisor to get his route done. Appellant noted that he had diabetes and stated that diabetes and stress can cause an imbalance of blood sugar.

With respect to medical evidence, appellant submitted an October 16, 2009 report from Dr. S. Grover, an orthopedic surgeon, who noted that appellant had a history of diabetes and had fallen on September 28, 2009. Dr. Grover indicated that appellant had fractured his right fifth finger and had undergone surgery.[2]

By decision dated November 30, 2009, OWCP denied appellant's claim for compensation. It indicated that he had not submitted sufficient factual and medical evidence and also found the fall was caused by a nonoccupational pathology.

Appellant requested a hearing before an OWCP hearing representative, which was held on April 13, 2010. At the hearing, he asserted that, at that time of the injury, he was walking back to his truck and there was a sewer line with uneven black top pavement. Appellant stated that he started to trip, put his hands out to brace himself for the fall and landed on his stomach and chest on top of his hands. According to him, he was asked by a witness whether he was diabetic and he answered yes and was brought a glass of juice. Appellant stated that he never passed out, was sitting when the ambulance arrived and the ambulance left before the police arrived.

On May 27, 2010 appellant submitted additional evidence. In a statement dated April 20, 2010, Joseph Kiel stated that he was returning home in his car when he saw someone had fallen in the center of the street, in front of his driveway. He stated that appellant was exhibiting symptoms associated with low blood sugar, his wife asked appellant if he was diabetic and eventually brought him some cranberry juice. The record contains a September 28, 2009 report from an ambulance and rescue squad, reporting that appellant was found seated on the ground, with a chief complaint of "diabetic-low blood sugar." According to the report, appellant was shaking with cold sweats before receiving cranberry juice and in the ambulance he became confused. The record also contains a September 28, 2009 hospital report but it is difficult to read.

In a January 4, 2010 statement, appellant stated that the length of his mail route and amount of mail carried was above the normal workload. He stated that he had conflicts with his supervisor, who mocked him, screamed at him and if he was using the bathroom, yelled at him to hurry up. Appellant stated that "because of work-related stress my sugar levels were thrown out

[2] The record indicates that appellant underwent finger surgery on October 1, 2009.

of balance…." He also alleged that his normal 10-minute break scheduled for 8:50 a.m. had been removed and because he was diabetic he need to snack at scheduled times and his blood sugar was thrown out of balance.

Appellant's representative submitted an undated statement reporting that an endocrinologist, Dr. Leon Shulman, had stated on May 27, 2010 that appellant's blood sugar level would have been at a low level when he began his mail route and this could have affected his ability to maintain his balance and could have caused him to fall on the uneven pavement.

By decision dated June 22, 2010, an OWCP hearing representative affirmed the denial of the claim. The hearing representative stated that the evidence suggested the fall was due to a preexisting diabetic condition.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[3] The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of an in the course of employment."[4] An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.[5] In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP 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. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[6]

The medical evidence required to establish the claim is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

[3] 5 U.S.C. § 8102(a).

[4] *Valerie C. Boward*, 50 ECAB 126 (1998).

[5] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[6] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[7] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

ANALYSIS

Appellant has filed a claim for an injuries sustained on September 28, 2009 when he fell while delivering mail. His burden of proof includes the submission of both factual and medical evidence sufficient to establish the claim. As to the factual element, the record does establish that appellant fell on September 28, 2009 while delivering mail. An OWCP hearing representative appeared to find that the fall was a noncompensable "idiopathic" fall, caused by his preexisting diabetes.[8]

The Board finds that appellant has not submitted sufficient evidence to establish an injury in the performance of duty on September 28, 2009. Appellant has not provided a detailed statement as to the circumstances surrounding his fall.[9] In the testimony at the hearing, he briefly described an uneven surface, without discussing his own physical condition prior to the fall. At that point appellant appeared to be claiming that the uneven surface alone caused his fall. It is evident from the record that there are additional relevant factual issues. The report from the ambulance and rescue squad reported that appellant had symptoms of shaking, sweating and confusion. The witness statement from Mr. Kiel refers to appellant having symptoms of low blood sugar, although these symptoms are not described. In his January 4, 2010 statement, appellant himself asserts that his blood sugar was out of balance, although he does not specifically discuss the events of September 28, 2009. He needs to submit a detailed statement describing all of the relevant circumstances regarding his fall on September 28, 2009.

There are additional factual issues that appellant has raised but has provided little probative evidence. For example, he has alleged that he was harassed by a supervisor. To the extent that appellant is alleging that such harassment caused stress, which affected his underlying diabetes and contributed to his fall on September 28, 2009, it must first be established that there was a compensable work factor based on harassment. It is well established that there must be specific and probative evidence of record substantiating an allegation of harassment as a compensable work factor.[10] Once the work factor is substantiated, then there must be medical evidence on causal relationship between the compensable work factor and the claimed injury.[11] Appellant has not submitted probative factual and medical evidence on this issue.

[8] Where a personal, nonoccupational pathology causes an employee to collapse and to suffer injury upon striking the immediate supporting surface and there is no intervention or contribution by any hazard or special condition of the employment, the injury is not a personal injury while in the performance of duty as it does not arise out of a risk connected with the employment. *John R. Black*, 49 ECAB 624, 626 (1998). An unexplained fall that is not established as due to an idiopathic condition is compensable.

[9] Appellant should provide a detailed factual statement regarding the employment incident or employment factors. *See D.S.* Docket No. 10-1475 (issued February 8, 2011).

[10] *See Pamela D. Casey*, 57 ECAB 260 (2005). A perception by the claimant that harassment occurred does not establish a compensable work factor.

[11] *See Dorothea M. Belnavis*, 57 ECAB 311 (2006).

In addition, appellant has referred to working without a break on September 28, 2009 as affecting his underlying condition and contributing to a fall.[12] The Board notes that there is no probative medical evidence on this issue. The statement from appellant's representative as to Dr. Shulman's opinion is of no probative medical value. Dr. Shulman did not sign the document nor in any way identify himself as the author of an opinion on the medical issue.[13] There is no evidence that a physician completed the report and it is of no probative medical value.[14]

The Board finds that appellant has not submitted the factual and medical evidence necessary to meet his burden of proof in this case. Therefore, OWCP properly denied the claim for compensation. 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.

On appeal, appellant submitted a report from Dr. Shulman and argued that work factors had contributed to appellant's injury. Dr. Shulman cited case law on causal relationship, stating that if a work factor contributes to a condition it is employment related and if a preexisting condition is aggravated by employment, the resulting disability is compensable. The Board notes that it cannot consider evidence that was not before OWCP at the time of the final decision.[15] As to causal relationship, appellant is correct that, if work factors contributed to the fall, then resulting injuries would be compensable. But as explained above, he did not submit factual evidence clearly explaining the circumstances of the fall on September 28, 2009. If appellant is claiming harassment or administrative error were factors, he must first submit evidence establishing the claimed factor as compensable. If the claimed factor is substantiated as a compensable work factor, he must submit probative medical evidence, based on a complete factual and medical background, on causal relationship between the work factor and the fall on September 28, 2009. Appellant did not submit sufficient factual and medical evidence and did not meet his burden of proof.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury in the performance of duty on September 28, 2009.

[12] The performance of assigned job duties is a compensable work factor. If appellant is claiming his condition was affected by stress resulting from an administrative decision to eliminate a break, he would have to establish administrative error by submitting probative evidence of error or abuse. *M.D.*, 59 ECAB 211 (2007).

[13] *See Merton J. Sills*, 39 ECAB 572 (1988).

[14] *See Bradford L. Sutherland*, 33 ECAB 1568 (1982).

[15] 20 C.F.R. § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 22, 2010 is affirmed, as modified to reflect that the claim is denied on the grounds that appellant did not submit sufficient evidence to establish the claim.

Issued: September 27, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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