United States Department of Labor
Employees' Compensation Appeals Board

K.T., Appellant	)	
and	)	**Docket No. 11-1570**
	)	**Issued: February 2, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Lake Charles, LA, 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
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 21, 2011 appellant filed a timely appeal from a May 23, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on August 2, 2010.

FACTUAL HISTORY

On September 3, 2010 appellant, then a 55-year-old city carrier, filed a traumatic injury claim alleging that she was delivering mail on August 2, 2010 when her right eye was scratched and burned. She stopped work on August 16, 2010. In a subsequent statement, appellant

[1] 5 U.S.C. § 8101 *et seq.*

detailed that she used her sleeve to wipe off dust and sweat in her right eye when she experienced pain. She called the employing establishment's hotline to report her injury and was instructed to continue on her route until a replacement could be located. Three hours later, appellant returned to the station, showed three supervisors her eye, which was swollen and nearly closed and was advised to complete her deliveries in the meantime. She maintained that the employing establishment's refusal to allow her to seek immediate medical treatment led to the development of a fungal infection.[2]

Coworkers Rose Brock and Eddie Charles each attested in undated statements that appellant's right eye was red and swollen on August 2, 2010. Both added that she was unable to go to a physician on that day because the supervisors told her to finish her work.

The employing establishment controverted the claim in a September 4, 2010 statement, asserting that appellant had different dates of the accident and contradicting statements. Additionally, appellant did not file an accident report, informed a supervisor on August 2, 2010 that she was having difficulties with her contact lenses and later indicated to the same supervisor that the alleged incident occurred on August 7, 2010.[3]

A September 3, 2010 report from Dr. George P. Fink, an optometrist, related that appellant complained of right eye pain and light sensitivity that first arose on August 2, 2010 while on duty. In addition, an examination revealed a large corneal ulcer.

In a September 29, 2010 treatment note, Dr. William B. Hart, an ophthalmologist, diagnosed right corneal ulcer. He checked the "yes" box in response to a form question asking whether appellant's fungal infection was work related and explained that she was not allowed to leave her job to attend to the condition. In an undated report, Dr. Hart remarked, "The origin of the fungal infection can, of course, not be known, but it is an unusual infection and most frequently comes from exposure to contaminated plant material or soil."[4]

OWCP informed appellant in an October 22, 2010 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a medical report from a qualified physician explaining how the purported incident on August 2, 2010 caused or contributed to a right eye injury.

Appellant submitted an October 6, 2010 note and October 14, 2010 duty status report from Dr. Hart, both of which released her to regular duty. She also provided a three-page article excerpt from Reader's Digest regarding the treatment of sudden vision changes.

By decision dated November 24, 2010, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that the accepted August 2, 2010 incident caused or contributed to her right corneal ulcer.

[2] Appellant later filed a (Form CA-7) on October 29, 2010.

[3] The case record contains an August 24, 2010 note signed by appellant listing August 7, 2010 as the date of injury.

[4] Dr. Hart's undated report contained an image of appellant's corneal ulcer.

On December 16, 2010 appellant requested an oral hearing. OWCP scheduled a telephonic hearing on March 28, 2011 at 12:00 p.m. Eastern Standard Time. Appellant did not connect to the proceeding at the designated time.[5] In a March 30, 2011 letter, OWCP's hearing representative informed her that the telephonic hearing could not be rescheduled or postponed and that he would instead conduct a review of the written record.

Appellant provided additional medical evidence. In a December 6, 2010 report, Dr. Hart opined that her ulcerated right eye and fungal infection could have been avoided had she been allowed to receive immediate medical treatment. He limited appellant's duties to indoor activities away from direct sunlight. Dr. Hart released her to regular work in a December 15, 2010 duty status report.

In a December 13, 2010 report, Dr. Fink reiterated that appellant scratched her eye on the job, but was prevented from seeking prompt medical attention. He noted that the delay in treatment "probably allowed the infection to worsen" to the degree that she may possibly encounter vision loss.[6]

On May 23, 2011 an OWCP hearing representative affirmed the November 24, 2010 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[7] including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.[8] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[9]

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 she 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.[10]

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[5] OWCP's hearing representative determined that appellant attempted to connect to the telephonic hearing on March 28, 2011 at 12:00 p.m. Central Standard Time, one hour past the arranged time.

[6] Appellant also submitted an undated factual statement and an undated witness account from another coworker. The coworker's signature was illegible.

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

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

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

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

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 rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11]

ANALYSIS

Although the employing establishment controverted the claim, the case record supports that appellant used her sleeve to wipe off dust and sweat in her right eye on August 2, 2010 while on her delivery route. The Board nonetheless finds that she did not establish her traumatic injury claim because the medical evidence did not sufficiently establish that this accepted incident was causally related to her corneal ulcer

In a September 29, 2010 treatment note, Dr. Hart indicated that appellant sustained right corneal ulcer and fungal infection while in the performance of duty by checking a box "yes" on a form report. He did not explain how the August 2, 2010 incident pathophysiologically caused or contributed to her condition.[12] An opinion on causal relationship that consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value.[13] In addition, Dr. Hart articulated in a separate, undated report that the etiology of appellant's injury "can, of course, not be known…."[14]

Dr. Fink stated in a September 3 and December 13, 2010 reports that appellant experienced right eye symptoms on August 2, 2010 while on duty. However, his opinion was of diminished probative value because he failed to address the particular details of the August 2, 2010 incident that she described in her Form CA-1 and accompanying factual statements.[15] In Dr. Fink's December 13, 2010 report, he noted that appellant scratched her eye at work but was prevented from promptly seeking treatment which "probably" allowed an infection to worsen. This report is of diminished probative value as he provided no medical rationale explaining how a specific work incident caused an injury and he speculated about what caused the condition to worsen.[16]

[11] *I.J.*, 59 ECAB 408 (2008).

[12] *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[13] *Alberta S. Williamson*, 47 ECAB 569 (1996).

[14] *See William D. Styron*, 32 ECAB 866 (1981) (absence of known etiology for an employee's condition does not relieve his burden of proof).

[15] *John W. Montoya*, 54 ECAB 306, 309 (2003).

[16] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

Finally, a three-page article excerpt from Reader's Digest regarding the treatment of sudden vision changes lacked any evidentiary value. The Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the necessary causal relationship as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular employment injury involved.[17]

In the absence of rationalized medical opinion evidence explaining the reasons why the August 2, 2010 incident caused an injury, appellant did not meet her burden.

Appellant contends on appeal that she sustained a right eye injury in the performance of duty. As noted, while the case record substantiates that the August 2, 2010 incident occurred as alleged, the medical evidence did not sufficiently connect her condition to this event. The Board further points out that appellant's prior argument that the employing establishment's refusal to allow her to seek immediate medical treatment implicated the human instincts doctrine.[18] Nevertheless, the doctrine is inapplicable in the present case because she did not exhibit signs of unintelligibility, confusion or lack of awareness that rendered her incapable of securing medical treatment or relief.[19]

The Board notes that appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.[20] However, 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 she sustained a traumatic injury in the performance of duty on August 2, 2010.

[17] *D.I.*, 59 ECAB 158 (2007).

[18] *See Jerry L. Sweeden*, 41 ECAB 721 (1990) (when an employee becomes ill on the job and is rendered helpless to provide for his own care, the employer has a duty to exercise reasonable care to put in the reach of the stricken employee such medical care and other assistance as the emergency thus created may in reason require, so that the employee may have his life saved or may avoid further bodily harm).

[19] *See Marianne Eick (George E. Eick)*, 40 ECAB 1056 (1989). *Compare with Sweeden*, *id.* (employee rendered helpless due to an epileptic seizure).

[20] 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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