United States Department of Labor
Employees' Compensation Appeals Board

C.K., Appellant	)	
and	)	**Docket No. 13-970**
	)	**Issued: July 23, 2013**
DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 15, 2013 appellant filed a timely appeal from a January 29, 2013 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 this case.

ISSUE

The issue is whether appellant has established an injury in the performance of duty on March 2, 2011.

FACTUAL HISTORY

On December 24, 2012 appellant, then a 59-year-old electroplater, filed a traumatic injury claim alleging that he sustained a left shoulder injury in the performance of duty on

[1] 5 U.S.C. § 8101 *et seq.*

March 2, 2011. On the claim form, he stated that he was carrying equipment while on a ladder, and the equipment slipped and he grabbed the falling equipment with his left arm. By letter dated December 27, 2012, OWCP requested that appellant submit additional factual and medical evidence with respect to the claim for compensation.

On January 8, 2013 appellant submitted a narrative statement dated March 2, 2011 describing the employment incident. He stated that he was working on a ship and when he was on a ladder saw a piece of equipment weighing approximately 28 pounds begin to slide. Appellant reached for the equipment with his left arm and felt a loud pop in his left shoulder. In a statement dated March 5, 2011, a supervisor stated that appellant had "reinjured" his left shoulder on March 2, 2011 while bringing equipment up a ladder.

With respect to medical evidence, appellant submitted a report dated May 11, 2011 from Dr. Marc Suffis, Board-certified in emergency medicine, who reported a date of injury as March 3, 2011, stating "Work related: Yes." Dr. Suffis indicated that appellant could return to work with restrictions, including five pounds occasional lifting above shoulder. The record contains a form report regarding work limitations signed by Dr. Suffis on July 7, 2011 and an employing establishment physician on July 19, 2011. Appellant also submitted an undated note from Dr. Suffis diagnosing left shoulder strain and authorizing physical therapy and a report from a physician's assistant.

By decision dated January 29, 2013, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish the claim.

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."[2] 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 and in the course of employment."[3] An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.[4] 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.[5]

[2] 5 U.S.C. § 8102(a).

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

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

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

OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[6] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[7]

Rationalized medical opinion evidence is medical evidence based on a complete factual and medical background, 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.[8]

ANALYSIS

In the present case, appellant filed a traumatic injury claim in December 2012 for a March 2, 2011 incident. He provided a narrative statement describing the incident and OWCP accepted that the incident occurred as alleged.

The issue is whether the medical evidence is sufficient to establish a diagnosed injury causally related to the March 2, 2011 employment incident. As noted above, this requires a medical opinion on causal relationship that is based on a complete and accurate background and is supported by medical rationale. The evidence before OWCP at the time of the January 29, 2013 OWCP decision does not contain a rationalized medical opinion on the issue presented. The statement "yes" that a condition is employment related in the May 11, 2011 report from Dr. Suffis is of little probative value without additional explanation.[9] Dr. Suffis did not provide a factual or medical history, results on examination, a diagnosis or a rationalized medical opinion relating the diagnosed condition to a March 2, 2011 incident. As to medical evidence from a physician's assistant, this does not constitute competent medical evidence as a physician's assistant is not a physician under 5 U.S.C. § 8101(2).[10]

In the absence of a rationalized medical opinion on the issue of causal relationship between a diagnosed condition and the March 2, 2011 employment incident, the Board finds that appellant did not meet his burden of proof in this case. On appeal, appellant submitted additional medical evidence. The Board can review only evidence that was before OWCP at the time of the final decision on appeal.[11] Appellant may submit new evidence or argument with a written

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3 (January 2013).

[7] *Id.*

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

[9] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

[10] *George H. Clark*, 56 ECAB 162 (2004).

[11] 20 C.F.R. § 501.2(c)(1).

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 has not established an injury in the performance of duty on March 2, 2011.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 29, 2013 is affirmed.

Issued: July 23, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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