United States Department of Labor
Employees' Compensation Appeals Board

A.C., Appellant	)	
and	)	**Docket No. 13-1986**
	)	**Issued: January 28, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Little Rock, AR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 28, 2013 appellant filed a timely appeal from March 14 and July 8, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP) which denied his traumatic injury claim. 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.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish that his right elbow strain was causally related to the September 29, 2011 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] On appeal, appellant alleged that he sustained an injury on the job on September 29, 2011 and that he was attaching a transcription of Dr. Highsmith's worksheet. The Board notes that it cannot review the new medical evidence submitted on appeal as its jurisdiction is limited to the evidence that was before OWCP at the time it issued its final appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Puritt*, 57 ECAB 126 (2005). Because Dr. Highsmith's transcription was not submitted before OWCP issued its July 8, 2013 decision, the Board cannot review it for the first time on appeal.

FACTUAL HISTORY

On January 31, 2013 appellant, then a 64-year-old part-time flexible clerk, filed a traumatic injury claim alleging that on September 29, 2011 he felt something pop in his right arm and elbow when he took the stamp drawer out of the safe.[3] He stopped work and returned on November 11, 2011.

In October 13 and November 10, 2011 work excuse slips, Dr. Jason McConnell, a Board-certified orthopedic surgeon, noted that appellant was not able to work and could return to full duty on November 11, 2011.

Appellant also submitted handwritten treatment notes dated September 13 and 29, 2011 by an unknown provider.

By letter dated February 11, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his traumatic injury claim. It requested additional information to establish that the September 29, 2011 incident occurred as alleged and that he sustained a diagnosed condition as a result of the work incident.

In a February 20, 2013 statement, appellant explained that he got to work and set up his service window area by putting up his stamp drawer and by registering and signing in on the computer. When he unlocked the safe and slid out the stamp drawer to take it to the counter he felt something pop in his right arm. Appellant stated that he reported the injury on September 29, 2011 and that his supervisor reported it as a continuation of the September 10, 2011 injury. He explained that that was why it was not reported until January 30, 2013. Appellant was examined by his regular doctor, Dr. William Highsmith, a Board-certified family practitioner, on September 29, 2011 who sent him to another doctor, Dr. Jason McConnell. He noted that Dr. McConnell was given a copy of the narrative letter and he was waiting for a response. Appellant also submitted a January 23, 2013 development letter from another OWCP claim (File No. xxxxxx051).

In a handwritten statement, James Webb, a clerk at the employing establishment, reported that on the morning of September 29, 2011 he and appellant arrived to work at approximately 6:30 a.m. They signed onto their computers and put their stamp and cash drawers on the front station. Mr. Webb heard a crash by the safe and saw that appellant had dropped and spilled his stamp drawer. He related that appellant was leaning on the safe holding his arm and complaining that he had hurt his right forearm.

In a decision dated March 14, 2013, OWCP denied appellant's traumatic injury claim. It accepted that the September 29, 2011 incident occurred as alleged but denied his claim finding insufficient medical evidence to establish that he sustained any diagnosed condition as a result of the accepted incident.

[3] The record reveals that appellant filed three previous traumatic injury claims for an October 19, 2010 employment incident (File No. xxxxxx568), a September 10, 2011 incident (File No. xxxxxx055) and a November 14, 2012 incident (File No. xxxxxx039).

On March 28, 2013 appellant submitted a request for a review of the written record. He resubmitted the work excuse slips by Dr. McConnell.

In September 29 and October 13, 2011 reports, Dr. McConnell related that appellant was lifting something about three weeks ago when he felt a tear in his biceps. He was placed on light duty but when he tried to do something at work yesterday he felt something pop and tear in his elbow again. Upon examination of the upper extremities, Dr. McConnell observed decent strength and pain upon supination and palpation over the lateral epicondyle. He was able to palpate appellant's biceps tendon. Dr. McConnell reported that diagnostic studies of the elbow did not show any obvious fractures or dislocations. He diagnosed right elbow sprain and possible biceps tear. In the October 13, 2012 report, Dr. McConnell noted continued pain in appellant's right elbow and recommended that he remain off work for a month and continue with anti-inflammatories.

In a March 4, 2013 report, Dr. McConnell stated that he initially examined appellant on September 29, 2011 for right arm pain that initially began at work three weeks prior. He treated appellant with pain medicine and muscle relaxers for right elbow sprain and possible biceps tendon tear. On October 13, 2012 Dr. McConnell had evaluated appellant and noted that he still had pain with resisted supination. He authorized another month off work. On November 10, 2011 Dr. McConnell examined appellant and noted much improvement. He authorized appellant to return to light duty for two weeks and then return to full duty. Dr. McConnell believed that appellant had at least a partial right biceps tendon tear even though a magnetic resonance imaging scan was not obtained. He reported that the mechanism appellant described was a plausible reason to have had a partial biceps tendon tear.

In a March 8, 2013 attending physician's report, Dr. McConnell stated that on March 29, 2011 he treated appellant for right arm pain and related that he lifted something at work three weeks earlier. He diagnosed right elbow sprain and possible biceps tear. Dr. McConnell checked a box marked "yes" that appellant's condition was caused or aggravated by the above-mentioned employment activity. He reported that appellant was totally disabled until November 10, 2011.

By decision dated July 8, 2013, an OWCP hearing representative affirmed the March 14, 2013 denial decision with modification. It accepted that appellant was diagnosed with an elbow strain but denied the claim finding insufficient medical evidence to demonstrate that his elbow strain was causally related to the accepted September 29, 2011 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[5] including that he or she sustained an injury in the performance of duty and that any

[4] 5 U.S.C. §§ 8101-8193.

[5] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[6]

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.[7] There are two components involved in establishing the fact of injury. 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.[8] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[9] An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.[10]

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.[11] 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.[12] The weight of the 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.[13]

ANALYSIS

Appellant alleges that on September 29, 2011 he sustained a right elbow condition when he took the stamp drawer out of the safe. OWCP accepted that the September 29, 2011 incident occurred as alleged and that he was diagnosed with right elbow strain, but it denied the claim finding insufficient medical evidence to establish that his right elbow condition was causally related to the accepted incident. The Board finds that appellant did not meet his burden of proof to establish that his right elbow strain resulted from the September 29, 2011 work event.

Appellant submitted various reports by Dr. McConnell. In September 29 and October 13, 2011 reports, Dr. McConnell related that about three weeks ago appellant was lifting something

[6] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[7] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[8] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[9] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

[11] *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

[12] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[13] *James Mack*, 43 ECAB 321 (1991).

at work when he felt a tear in his biceps and that yesterday he also felt something pop and tear in his elbow while at work. He conducted an examination and observed pain upon supination and palpation over the lateral epicondyle. Dr. McConnell reported that diagnostic studies of the elbow did not reveal any obvious fractures or dislocations. He diagnosed right elbow sprain and possible biceps tear. Dr. McConnell included work excuse slips authorizing appellant to remain off work until November 11, 2011. In a March 4, 2013 report, he stated that he initially examined appellant for right arm pain that began about three weeks prior. Dr. McConnell related the treatment he provided and reported that appellant had at least a partial right biceps tendon tear. He explained that the mechanism appellant described was a plausible reason to have had a partial biceps tendon tear.

The Board notes that Dr. McConnell provided examination findings and a firm, medical diagnosis. The Board finds that although Dr. McConnell relates appellant's right elbow condition to an incident work, he does not accurately describe the September 29, 2011 work event.

Dr. McConnell also repeatedly stated that appellant's right elbow pain began three weeks before the September 29, 2011 incident described in his traumatic injury claim. The Board has held that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of limited probative value.[14] An accurate history is especially warranted in this case since appellant filed previous traumatic injury claim for a September 10, 2011 employment incident. Although Dr. McConnell checked "yes" in a March 8, 2013 attending physician's report that appellant's right elbow sprain was caused or aggravated by a lifting incident at work, the Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[15] Accordingly, Dr. McConnell's reports are insufficient to establish appellant's claim.

The additional handwritten treatment notes dated September 13 and 29, 2011 are likewise insufficient to establish appellant's claim as there is no indication that a physician provided the reports. The Board has found that reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.[16]

Although appellant believes his elbow condition was causally related to the September 29, 2011 incident, the Board has held that the issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.[17] Because he has not submitted such probative medical evidence in this case, he did not meet his burden of proof to establish his claim.

[14] *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[15] *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[16] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[17] *W.W.*, Docket No. 09-1619 (June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).

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.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his right elbow condition was causally related to the September 29, 2011 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 8 and March 14, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 28, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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