

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

A.J., Appellant)	
)	
and)	Docket No. 16-0339
)	Issued: July 18, 2016
U.S. POSTAL SERVICE, PETER)	
STUYVESANT STATION, New York, NY,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On December 15, 2015 appellant filed a timely appeal from an October 26, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employee's Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish an employment-related injury on June 8, 2015 as alleged.

FACTUAL HISTORY

On June 8, 2015 appellant, then a 38-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, a panel of a mailbox fell on her neck and wrist. She

¹ 5 U.S.C. § 8101 *et seq.*

noted that the right side of her neck was swollen and that she sustained a scratch on her left arm and wrist. The claim form indicated that appellant saw Dr. Jeffrey Levine, a physician Board-certified in emergency medicine, at King's County Hospital Center. The employing establishment checked a box indicating agreement with the statement of appellant, and noted "[right] neck contusion."

In a June 8, 2015 note, Dr. Levine indicated that appellant was treated in the Kings County Hospital Emergency Medicine Department on June 8, 2015 and was excused from work until June 11, 2015. A patient discharge report dated June 8, 2015, indicates that appellant was treated by Dr. Levine and by Henry Desrosiers, a nurse practitioner. A diagnosis was made of contusion of face, scalp, and neck except eyes, and she was discharged to home care. The signature is illegible.

On July 6, 2015 appellant filed a claim for recurrence of this injury on June 15, 2015. She claimed that when the accident first happened, she had chest pains, trouble swallowing, and neck pain from swelling and was given medicine for pain. Appellant alleged that she suffered the same shortness of breath, continued chest pain, trouble swallowing, and neck pain on June 15, 2015.

Appellant was admitted to Kings County Hospital Center on June 18, 2015 and discharged on June 20, 2015. Her admitting physician was Dr. Carina Biggs, a physician Board-certified in surgery and surgical critical care, and discharge physician was Dr. Roby Abraham.² No signature appears on the report. The report indicates that appellant presented nine days status post-traumatic injury to the right neck after a large metal mailbox door fell and struck her on the neck. The report indicated that in the emergency room appellant was found to have hemopneumothorax on a computerized tomography scan that was treated with a chest tube. At that time appellant refused surgery, and the staff warned her of the risks of conservative management. The principal diagnosis was abrasion or friction burn of hip, thigh, leg, and ankle without mention of infection.

In a June 20, 2015 attending physician's report, Dr. Tim Schwartz, a Board-certified surgeon with a Board-certified subspecialty in surgical critical care, noted in history that a panel from a mailbox fell on appellant's neck. He checked a box marked "yes" indicating that this history was consistent with the current condition, although he noted that she likely had a preexisting pleural condition. Dr. Schwartz diagnosed pneumothorax and found that it was caused or aggravated by the employing establishment incident of a blunt trauma. He noted that appellant required hospitalization from June 17 through 20, 2015, and that he inserted a chest tube. Dr. Schwartz instructed her to refrain from heavy lifting.

In an August 11, 2015 note, Dr. Rosa Yves-Lynne Daniel found that appellant could return to work on August 21, 2015.

By letter dated September 1, 2015, OWCP informed appellant that further evidence was necessary to support her claim, including factual evidence as to how the incident occurred as well as medical evidence of a diagnosed medical condition causally related to the accepted

² The Board cannot confirm Dr. Abraham's credentials.

incident. Appellant was afforded 30 days to submit this information. No further evidence was received by OWCP.

By decision dated October 26, 2015, OWCP denied appellant's claim as she had not established that the incident occurred as alleged. It further denied her claim as she had not established a diagnosed medical condition causally related to her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 or exposure, which is alleged to have occurred.⁴ In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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 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.⁷

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁷ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁸ An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁹ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.¹⁰ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹¹

ANALYSIS

OWCP denied appellant's claim finding that she failed to establish that the employment incident occurred as alleged. However, the Board finds that she has established that the incident occurred, as alleged. Appellant stated that she was injured on June 8, 2015 when a panel of a mailbox fell on her neck and wrist. On the claim form the employing establishment indicated their agreement with her statement as to how the incident occurred. On the same date, appellant sought medical attention at Kings County Hospital Center and filed her claim for a traumatic injury. The date of injury is consistent with the history stated to her various physicians. The Board finds that appellant's statements are consistent with the surrounding facts and circumstances in that she promptly filed her claim on the same date as the employment incident, that the employing establishment agreed with her statement of facts, that she sought medical treatment on the same date, and that she consistently reported to medical personnel that she was injured on June 8, 2015. Accordingly, appellant has established that she experienced the employment incident of June 8, 2015.¹²

The Board finds, however, that the medical evidence of record is insufficient to establish that appellant sustained a medical diagnosis causally related to the accepted employment incident.

Dr. Levine signed a note on June 8, 2015 indicating that appellant was seen on that date and was excused from work. However, he did not provide any explanation, medical diagnosis, or relate the excuse to the employment incident. Similarly, Dr. Daniel also signed a work release note, but she did not describe a medical condition nor did she discuss the employment incident. The medical opinion necessary to establish a claim must be of reasonable medical certainty and

⁸ *M.H.*, 59 ECAB 461 (2008); *George W. Glavis*, 5 ECAB 363, 365 (1953).

⁹ *S.P.*, 59 ECAB 184 (2007).

¹⁰ *Barbara R. Middleton*, 56 ECAB 634 (2005).

¹¹ *O.T.*, Docket No. 14-1803 (issued December 29, 2014); *see also Wanda F. Davenport*, 32 ECAB 552, 556 (1981).

¹² *See G.W.*, Docket No. 13-1943 (issued July 29, 2014).

must be supported by medical rationale explaining the nature of the diagnosed condition and the employment incident. Causal relationship is medical in nature and can be established only by probative medical evidence.¹³

Appellant submitted medical reports establishing a medical diagnosis. Dr. Schwartz submitted an attending physician's report noting that a panel from a mailbox fell on her neck, and diagnosed pneumothorax due to blunt trauma. This diagnosis is consistent with the hospital records which indicate that appellant was treated for hemopneumothorax. However, Dr. Schwartz provided no explanation for his conclusion regarding causal relationship. A mere conclusion without the necessary rationale explaining how and why the physician believes that an incident caused a diagnosed condition is insufficient to meet appellant's burden of proof.¹⁴

The Board notes that most of the hospital records do not contain a legible signature by a physician. The note from June 8, 2015 contains a signature, but it is illegible. The hospital reports concerning appellant's admission from June 18 through 20, 2015 contain no legible signature. Medical evidence from a physician assistant or a nurse practitioner does not constitute competent medical evidence under FECA.¹⁵ As there is no valid signature, the Board cannot determine who signed the reports and the medical credentials of the author. Therefore, these reports are not probative or competent medical evidence because they do not contain a legible signature of a physician.¹⁶ In addition, the hospital notes do not provide a rationalized medical opinion explaining how a medical diagnosis was causally related to the accepted employment incident.¹⁷

An award of compensation may not be based on surmise, conjecture, or speculation.¹⁸ Appellant did not establish that her diagnosed medical condition was causally related to the accepted employment incident. The Board therefore finds that OWCP properly denied her claim on the issue of medical causation, but further finds that she has proven that the incident occurred as alleged and has resulted in a diagnosed medical condition.

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.

¹³ See *D.I.*, 59 ECAB 158 (2007).

¹⁴ See *G.M.*, Docket No.14-2057 (issued May 12, 2015).

¹⁵ 5 U.S.C. § 8102(2). See also *V.C.*, Docket No. 16-0642 (issued April 19, 2016).

¹⁶ See *K.W.*, 59 ECAB 271 (2007) (form reports that had illegible signatures did not constitute competent medical evidence); 5 U.S.C. § 8101(2) (defines the term physician).

¹⁷ While the June 20, 2015 hospital discharge report notes a proper history of injury and that appellant was treated for hemopneumothorax, the diagnosis of hip, thigh, leg, and ankle injury appears inconsistent with the other evidence of record.

¹⁸ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that the incident occurred as alleged and resulted in a medically diagnosed condition. It is further found that she failed to meet her burden of proof to establish that she sustained an injury causally related to the work incident on June 8, 2015, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 26, 2015 is affirmed, as modified.

Issued: July 18, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board