United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 07-2376**
	)	**Issued: April 7, 2008**
DEPARTMENT OF THE ARMY, FOOD SERVICE BRANCH UNIT, Mannheim, Germany, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 20, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 26, 2007, denying his claim for compensation. Pursuant to 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 12, 2005.

FACTUAL HISTORY

On April 24, 2007 appellant, then a 42-year-old food service worker, filed a traumatic injury claim (Form CA-1). He stated that on September 12, 2005 he slipped on a ladder, shifted his weight onto an injured knee and then landed on the floor. Appellant reported the incident as occurring at 6:00 p.m. He described the injury as his whole left side, including earaches and headaches. In a narrative statement, appellant stated that he was on a ladder cleaning the

kitchen, when it fell over and he fell to the floor. He reported that he landed on his upper back and had a sharp pain on the left side of his body. Appellant stated that he told Mr. Wharton and went to ask for forms to complete but no forms were available. According to him, he went to a German physician the following day.

In a May 23, 2007 statement, appellant's brother, a coworker, stated that appellant reported the injury to his shift leader on the day of the injury. He stated that the next day appellant told him of the fall from the ladder, and "we reported it to our manager." According to appellant's brother he helped appellant fill out paperwork, but it must have been lost in between change of management.

An employing establishment supervisor, Benjamin Mungin, submitted an April 23, 2007 statement that in September 2005 appellant reported that he had just fallen off a ladder near the pots and pan area. He reported that appellant stated he did not need an accident report as he was going to see his own German doctor. To the best of his recollection the incident occurred before the noon meal. The supervisor stated that appellant went back to work without signs of injury and did not contact him again regarding an accident report.

The record also contains an April 24, 2007 statement from William Fulgham, a food service branch chief, who indicated that the shift leader on the date of the alleged injury was Mr. Mungin, not Mr. Wharton. He asserted that appellant told Mr. Mungin that he fell on his knees, not on his upper back, and no accident report was filed.

With respect to medical evidence, the record contains a June 29, 2007 report from Dr. Michael Gumbel, a family practitioner, indicating appellant was under his care from September 1, 2006 for lower back pain. Appellant also submitted a March 7, 2007 cervical spine magnetic resonance imaging (MRI) scan report showing a paramedian small disc prolapse at C6-7. In a report dated March 7, 2007, a physician indicated that appellant had cervical symptoms of unknown etiology. The history noted a basketball accident in 1985 and knee surgery in 1994. The record also contains medical reports in German dated January 20 and March 30, 2006. These reports do not refer to a September 2005 incident.

On July 10, 2007 appellant submitted form reports from a Dr. K. Kleine. The dates of the reports are illegible and written in German, although a duty status report (Form CA-17) contains a description in English of a fall from a ladder landing on neck and upper back. In an attending physician's report (Form CA-20), Dr. Kleine checked a box "no" as to whether the condition found was causally related to appellant's employment injury.

In a report dated July 18, 2007, Dr. Nathan Negin, an internist, opined that appellant had injuries to multiple levels of the cervical spine that prevented him from performing his job duties. Dr. Negin reported that appellant had been treated by Dr. Kleine for lower back pain in May 2005 and commencing in January 2006, with treatment for cervical symptoms in June 2005 and March 2007. Dr. Negin stated appellant's history, physical examination and MRI scan results were consistent with an injury to the neck and upper back, with x-rays showing degenerative changes at C7 and L4-5. He concluded that appellant should receive a neurological evaluation.

By decision dated July 26, 2007, the Office denied the claim for compensation. The Office found the evidence was insufficient to establish that the event occurred as alleged, as there were several discrepancies between appellant's account of the injury and the employing establishment. The Office found that lack of confirmation of the injury, late official notice, continuing to work without apparent difficulty and the lack of contemporaneous medical evidence cast doubt on the reliability of appellant's statements.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that he or she sustained an injury while in the performance of duty.[2] In order to determine whether an employee actually sustained an injury in the performance of duty, the Office 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.[3]

The Office'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.[4] 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.[5]

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.[6]

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[1] 5 U.S.C. §§ 8101-8193.

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

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

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

[5] *Id.*

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

ANALYSIS

The Office based the denial of the claim on the first element of fact of injury, that is, whether appellant actually experienced the employment incident alleged to have occurred. Appellant alleged that he slipped off a ladder on September 12, 2005 while in the performance of duty and landed on his upper back. The Office found appellant had not established that the incident occurred as alleged. While the Board has held that circumstances such as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may cast doubt on appellant's statements,[7] the Office did not fully consider the relevant factors on this issue.

It is well established that an employee's statement regarding the occurrence of an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.[8] In addition, there is evidence supporting appellant's statement regarding the occurrence of an employment incident. The statement from the shift leader, Mr. Mungin, confirms that appellant gave notice of the incident. Mr. Mungin indicated that appellant notified him that he had fallen off a ladder on the day of the incident. While Mr. Fulgham states that appellant told Mr. Mungin that he fell on his knees, not his back, Mr. Mungin did not provide any information that is inconsistent with appellant's account of the incident.

In view of appellant's statement and the prompt notification of a fall from a ladder given to his supervisor, the Board finds the evidence is sufficient to establish that on or about September 12, 2005 appellant fell off a ladder as alleged. The issue then shifts to the second element of fact of injury. To meet his burden of proof to establish an injury in the performance of duty, appellant must submit probative medical evidence on causal relationship between a diagnosed condition and the employment incident. Appellant did not submit any probative medical evidence on the issue presented. The form reports from Dr. Kleine do not provide a complete factual and medical background, and the only statement on causal relationship with employment is a checkmark "no." None of the medical reports of record provide a detailed history of the employment incident and a rationalized medical opinion on causal relationship. Dr. Negin, for example, did not provide a history of a September 2005 fall from a ladder.

The Board accordingly finds that appellant did not meet his burden of proof to establish an injury in the performance of duty. Appellant did not submit probative medical evidence in support of his claim.

CONCLUSION

Appellant did not establish an injury in the performance of duty on September 12, 2005 as the medical evidence is insufficient to meet his burden of proof.

[7] *See Betty J. Smith*, 54 ECAB 174 (2002).

[8] *Thelma Rogers*, 42 ECAB 866 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 26, 2007 is modified to reflect that the evidence supports an employment incident and is affirmed as modified.

Issued: April 7, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board