United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 09-1293**
	)	**Issued: December 22, 2009**
U.S. POSTAL SERVICE, MAIL FACILITY, Raleigh, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 2, 2009 appellant filed a timely appeal from November 24, 2008 and February 4, 2009 merit decisions of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), 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 August 10, 2007. Appellant argued that the evidence from three medical professionals should be conclusive evidence to overturn the previous decision.

FACTUAL HISTORY

On October 6, 2008 appellant, an automotive technician, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2007 he sustained a left hand injury while in the performance of duty. He stated that he was unloading a vehicle and his left hand was caught between the door and a pole. An employing establishment form dated August 10, 2007 signed

by appellant and a supervisor indicated that appellant did not wish to file a traumatic injury claim at that time.

As to medical evidence, appellant submitted an October 6, 2008 report from Dr. Ward Bennett, a family practitioner, who reported that last year appellant had pinched his hand between a vehicle and a pole, and appellant stated that his left ring finger had developed a mass. The diagnosis was first-degree burn of the finger. In a duty status report (Form CA-17) dated October 6, 2008, Dr. Bennett provided a history of a left hand caught between door and pole, and diagnosed mass in the finger.

By decision dated November 24, 2008, the Office denied appellant's claim for compensation. It found an employment incident was established as alleged, but the medical evidence was insufficient to establish the claim.

Appellant requested reconsideration of his claim. He submitted a December 4, 2008 report from Dr. Bennett, who stated that the diagnosis of a finger burn was incorrect. Dr. Bennett stated that appellant was seen for a contusion to the finger which led to a mass formation in his finger. Appellant also submitted a December 12, 2008 report from Melissa Blakely Beitzel, a physician's assistant.

In a decision dated February 4, 2009, the Office provided a merit review of the claim. It found the evidence was not sufficient to warrant modification of the November 24, 2008 decision.

LEGAL PRECEDENT

The Federal Employees' Compensation Act 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."[1] The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of an in the course of employment."[2] An employee seeking benefits under the Act has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] 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.[4]

[1] 5 U.S.C. § 8102(a).

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

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

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

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.[5] 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.[6]

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.[7]

ANALYSIS

Appellant has described, albeit briefly, an incident on August 10, 2007 where his left hand was caught between a vehicle door and a pole. The Office accepted that an incident occurred as alleged.

It is appellant's burden of proof in this case to submit rationalized medical evidence on the issue of causal relationship between a diagnosed condition and the employment incident. As noted above, this requires a medical report with an accurate and complete history, and with an opinion on causal relationship that is supported by medical rationale explaining the basis for the opinion.

The medical evidence before the Office did not include a rationalized medical opinion.[8] Dr. Bennett did not provide a complete factual and medical background. In addition, his statement that there was a contusion followed by the development of a left ring finger mass was not accompanied by any medical rationale or additional explanation. There is no evidence clearly explaining how a contusion from over a year ago would be the cause of the current condition. 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).[9]

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

[6] *Id.*

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

[8] The Board noted that on appeal appellant submitted additional medical evidence. The Board can review only evidence that was before the Office at the time of the final decisions on appeal. 20 C.F.R. § 501.2(c)(1).

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

In his brief to the Board, appellant referenced three medical professional reports, but reports from only two of the medical professionals were in the record. There was no report from Dr. George Edwards. Nonetheless, the evidence submitted is insufficient to meet appellant's burden of proof.

The Board accordingly finds that appellant did not meet his burden of proof in establishing an injury in the performance of duty on August 10, 2007. The medical evidence does not contain a rationalized medical opinion on the issue presented.

CONCLUSION

The Board finds that appellant did not establish an employment-related injury on August 10, 2007.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 4, 2009 and November 24, 2008 are affirmed.

Issued: December 22, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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