United States Department of Labor
Employees' Compensation Appeals Board

P.T., Appellant	)	
and	)	**Docket No. 09-2289**
	)	**Issued: August 16, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 9, 2009 appellant filed a timely appeal from the March 10 and August 21, 2009 merit decisions of the Office of Workers' Compensation Programs denying his traumatic injury claim. 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 sustained a traumatic injury while in the performance of duty on September 20, 2006.

FACTUAL HISTORY

On October 1, 2008 appellant, a 62-year-old modified mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on September 20, 2006, he injured his neck, back, hip, hands and right eye when he fell on debris in the employing establishment mezzanine. He also

alleged that the employing establishment had ignored his restrictions, which prohibited him from climbing stairs.[1]

On February 3, 2009 the Office informed appellant that the evidence submitted was insufficient to establish his claim and advised him to provide additional information and evidence, including a detailed description of the events surrounding the claimed injury; the alleged cause of the injury; statements from any witnesses or other documentation supporting his claim; and the reason he delayed reporting the incident and filing his claim for more than two years. Appellant was also instructed to provide a narrative medical report containing a diagnosis and a physician's opinion explaining how the claimed incident caused the diagnosed condition.

In a decision dated March 10, 2009, the Office denied appellant's claim. It found that the evidence was insufficient to establish that the claimed incident occurred as alleged, or that he had a diagnosed condition which could be connected to the claimed incident.

On March 17, 2009 appellant requested a telephonic hearing.

Appellant submitted medical records for the period March 16, 2006 through December 22, 2008. On September 26, 2006 Dr. Ward Hale, a treating physician, stated that appellant had been seen for an "urgent visual exam[ination]" on September 11, 2006, complaining of decreased vision in the right eye since the previous Saturday. Appellant informed Kelly R. Thompson, staff optometrist, that his vision had continued to worsen since he awoke with decreased vision on Saturday and that "it was like looking through a coke bottle."

On October 11, 2006 Dr. Timothy M. Morand, a treating physician, stated that appellant was being seen following a recent retinal detachment in the right eye. He noted appellant's visual complaints of decreased vision due to a 1969 employment-related vehicle wreck.

In an August 22, 2007 operative report, Dr. Stewart Krug, a Board-certified opthalmologist, performed phacoemulsification; IOL implantation; pars plana vitrectomy; laser photocoagulation and scleral buckling, right eye. He diagnosed rhegmatogenous retinal detachment of the right eye. Dr. Krug stated that appellant had undergone pneumatic retinopexy for retinal detachment nine months earlier and had subsequently developed redetachment of the retina due to reopening of the large previously-treated retinal break. The record also contains a February 6, 2008 operative report from Dr. Krug, who performed a repositioning of the posterior chamber of the intraocular lens of the right eye.

Appellant submitted a February 16, 2008 ophthalmology outpatient note signed by Dr. Eric Speckner, a treating physician, who indicated that appellant's active conditions included a neck disorder and degenerative joint disease.

[1] Appellant's previous claims include a December 3, 1994 traumatic injury claim (File No. xxxxxx955); a June 17, 1999 emotional condition claim, which was denied (File No. xxxxxx043); a May 22, 2000 occupational disease claim, which was accepted for bilateral carpal tunnel syndrome (File No. xxxxxx947); an October 2003 emotional condition claim, which was denied (File No. xxxxxx258) and an October 1, 2008 traumatic injury claim alleging that he sustained a right eye injury on August 17, 2007 (File No. xxxxxx910) currently under development.

On February 5, 2009 Dr. Morand stated that he examined appellant on August 21, 2007 for complaints of a shadow in his right eye for a week. He noted that appellant had experienced a retinal detachment in September 2006 that was repaired with a scleral buckle procedure. Dr. Morand diagnosed a reoccurrence of a retinal detachment in the right eye. Appellant denied any recent history of trauma to the right eye.

A May 19, 2009 memorandum to the file reflected that appellant filed an April 14, 2009 occupational disease claim (File No. xxxxxx426) alleging an exacerbation of his neck, back and bilateral wrist conditions due to the performance of his light-duty assignment.

During the June 24, 2009 telephonic hearing, appellant noted that he injured his eye on three separate occasions, February 20 and September 20, 2006 and August 17, 2007. Since 2001, he had been restricted from climbing stairs, but the employing establishment moved his locker to the mezzanine during a renovation process, requiring him to climb stairs and walk through debris for more than 18 months. Appellant stated that he fell on debris on his way to his locker on September 20, 2006. He also reinjured his hands, neck and lower back. Appellant related that he saw flashes of light after the fall, during which he may have hit his eye with a metal splint he was wearing on his hand. He testified that he had obtained prior leave approval from his supervisor for the September 22, 2006 eye surgery.

Appellant stated that he experienced no problems with his right eye prior to the September 20, 2006 fall. He sought medical treatment from the Veterans Administration on September 20, 2006 and would obtain records to verify treatment. In response to a question about a September 11, 2006 report reflecting that he woke up at home on that date with diminished vision, appellant stated that he may have "got this date wrong here 9/20. Maybe I got it wrong." Appellant advised that dates do not make sense to him because of his post-traumatic stress condition. He delayed filing his claim for more than two years because he was unsure of the extent of the damage and wanted to receive all test results before filing. Appellant's representative informed him of the necessity of providing some documentation that the September 20, 2006 incident did, in fact, occur.

Subsequent to the hearing, appellant submitted a July 3, 2009 statement from coworker Wade A. Jones, who advised that he saw appellant fall over debris in the employing establishment mezzanine sometime during the first or second week of September 2006. Mr. Jones stated that he helped appellant up and asked him if he was alright. Appellant just held his right side and stated that he saw flashes of light.

In a decision dated August 21, 2009, the Office hearing representative affirmed the March 10, 2009 decision, finding that appellant had failed to establish fact of injury.

LEGAL PRECEDENT

The Federal Employees' Compensation Act[2] provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the

[2] 5 U.S.C. § 8101 *et seq.*

performance of duty.[3] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[4]

An employee seeking benefits under the Act 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[5] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, he must submit sufficient evidence to establish that he experienced a specific incident at the time, place and in the manner alleged, and that such incident caused an injury.[6]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[7]

A claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[8] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[9]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical

[3] *Id*. at § 8102 (a).

[4] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *See Paul Foster*, 56 ECAB 208 (2004). *Betty J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q), (ee).

[7] *See Betty J. Smith, id.*

[8] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[9] *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[10]

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a traumatic injury on September 20, 2006. Appellant's presentation of the facts is not supported by the evidence of record, and does not establish that a specific incident occurred which caused an injury on the date in question.[11] There are such inconsistencies in the evidence which cast serious doubt on the validity of his claim.

Appellant initially reported on his October 1, 2008 CA-1 form that he injured his neck, back, hip, hands and right eye when he fell on debris in the employing establishment mezzanine on September 20, 2006. He provided no detailed account of the incident, as required in a traumatic injury claim. Appellant subsequently testified that he saw flashes of light after he fell on the date in question and that he may have hit his eye with a metal splint he was wearing on his hand. However, his descriptions of the incident of that date are not consistent and do not relate with specificity the circumstances, or the exact and immediate consequences of the injury (*e.g.*, whether he slipped, slid or broke the fall with his hands; whether he experienced pain or dizziness; whether his eye was bleeding or whether he cried out).

Appellant's subsequent course of action also casts doubt on his claim. He testified that he received medical treatment at the Veterans Administration immediately following the September 20, 2006 incident. There is no evidence of record to corroborate such treatment. Appellant delayed more than two years in filing his traumatic injury claim, ostensibly because he was unsure of the extent of the damage caused by the incident. He claims to have immediately informed his supervisor of the incident; however, there is no evidence of such notification.

During the June 24, 2009 telephonic hearing, appellant testified that he injured his eye on three separate occasions, namely on February 20 and September 20, 2006 and August 17, 2007, but he later testified that he experienced no problems with his right eye prior to the September 20, 2006 fall. After confirming that he fell over debris on September 20, 2006, he acknowledged that he may have "got this date wrong here 9/20. Maybe I got it wrong." Appellant noted only that dates do not make sense to him because of a post-traumatic stress condition. The record reflects that appellant was seen by Dr. Hale for an "urgent visual exam[ination]" on September 11, 2006, complaining of decreasing vision in the right eye since the previous Saturday. This report is inconsistent with his claim that he had no visual problems prior to September 20, 2006. Appellant also noted that his supervisor had previously approved leave for eye surgery on September 22, 2006.

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] *See Dennis M. Mascarenas*, *supra* note 9.

Following the telephonic hearing, appellant submitted a July 3, 2009 statement from Mr. Jones, who noted that he saw appellant fall over debris in the employing establishment mezzanine during the first or second week of September 2006. This statement does not support appellant's claim that he sustained the fall on September 20, 2006. The time frame referenced is not consistent with the date of injury identified by appellant. The fact that appellant waited more than two years to identify any witness casts doubt on both the accuracy of Mr. Jones' statement. The Board notes that the events described by Mr. Jones (that he helped appellant up and asked him if he was alright, and that appellant just held his right side) were not mentioned by appellant in his CA-1 form or in his testimony before the Office. Appellant did not provide any other factual evidence to corroborate the alleged events.

The medical evidence of record does not support appellant's claim. On October 11, 2006 Dr. Morand stated that appellant was being seen following a recent retinal detachment in the right eye. On August 21, 2007 he advised that appellant had a shadow on the right side of his right eye and noted a history of a retinal detachment and tear. However, none of Dr. Morand's reports record a history of a traumatic injury on September 20, 2006. On August 22, 2007 Dr. Krug performed surgery on appellant's right eye and diagnosed rhegmatogenous retinal detachment of the right eye. He stated that appellant had undergone pneumatic retinopexy for retinal detachment nine months earlier and had subsequently developed re-detachment of the retina due to reopening of the large previously-treated retinal break. However, Dr. Krug did not indicate that appellant's condition had resulted from a traumatic incident. The medical evidence of record is devoid of any factual history involving a September 20, 2006 traumatic injury. Appellant's failure to report the alleged incident to any of his treating physicians creates doubt as to its occurrence.

Appellant failed to establish the fact of injury: he did not submit sufficient evidence to establish that he actually experienced an employment incident at the time, place and in the manner alleged or that the alleged incident caused a diagnosed condition. Therefore, the Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on September 20, 2006.[12]

On appeal, appellant's representative contends that the Office's decisions were contrary to fact and law. For reasons stated above, the Board finds counsel's argument to be without merit.[13]

CONCLUSION

Appellant has not met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on September 20, 2006.

[12] As appellant failed to establish that the claimed event occurred as alleged, it is not necessary to discuss the probative value of medical evidence. *Tracey P. Spillane, supra* note 6.

[13] The Board notes that appellant's claim that the Office failed to comply with restrictions pursuant to a prior claim would be more appropriately addressed in the relevant claim.

ORDER

IT IS HEREBY ORDERED THAT the August 21 and March 10, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: August 16, 2010
Washington, DC

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

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

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