United States Department of Labor
Employees' Compensation Appeals Board

F.J., Appellant	)	
and	)	**Docket No. 10-251**
	)	**Issued: August 2, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, 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 November 2, 2009 appellant filed a timely appeal from a June 18, 2009 merit decision that denied his 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 established that, on April 22, 2009, he sustained an injury in the performance of duty causally related to his employment.

FACTUAL HISTORY

On May 7, 2009 appellant, a 63-year-old truck driver, filed a traumatic injury claim (Form CA-1) for a sun-burned left arm that he received on April 22, 2009.

Appellant submitted an unsigned treatment note containing a diagnosis of contact dermatitis "[a]nd other eczema, unspecified cause [*sic*]," a note bearing an illegible signature, a report signed by a physician's assistant, and notes signed by Dr. Alexia Zgurzynski, an orthopedist.

On May 5, 2009 G. Ramsey, a supervisor, authorized medical treatment for sunburn.

In reports dated May 5 and 8, 2009, Dr. Zgurzynski presented findings on examination and diagnosed contact dermatitis. She noted that "a few weeks ago" appellant's left arm got "sunburned" but that this condition subsequently developed into a red, "swollen," "itchy" rash.

By decision dated June 18, 2009, the Office denied the claim because appellant failed to establish that he sustained an injury as defined by the Federal Employees' Compensation Act because the evidence of record did not demonstrate that the alleged employment incident occurred as alleged.[1]

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. 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.[2] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[3]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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.[4]

ANALYSIS

Appellant alleged that he sustained a sun-burned left arm on April 22, 2009 while driving a postal truck. Although asked to do so, he did not describe with any specificity how he sun-burned his arm while driving his truck. While it is accepted that appellant did drive a postal truck on the date in question, this fact alone does not establish how sunburn would have

[1] On appeal, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision).

[2] *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

[3] *T.H.*, 59 ECAB ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[4] *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

occurred. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[5]

Appellant has not submitted sufficient evidence to establish that he sustained an injury and thus has not established his claim.

The note bearing the illegible signature, the unsigned treatment note and the reports signed by the physician assistant are not competent medical evidence and have no evidentiary value because they cannot be identified as having been prepared by a "physician" as defined by the Act.[6] Furthermore, because healthcare providers such as nurses, acupuncturists, physician assistants and physical therapists are not considered "physicians" under the Act, their reports and opinions do not constitute competent medical evidence.[7] Thus, this evidence does not establish a causal relationship between the established employment factors and appellant's alleged condition.

Dr. Zgurzynski noted that appellant's left arm was "sunburned" but that this condition subsequently developed into a red, "swollen," "itchy" rash. Absent from Dr. Zgurzynski's reports is an opinion explaining how the established incident caused appellant's alleged sunburn, the red, "swollen," "itchy" rash or the contact dermatitis she diagnosed. Thus, this evidence does not establish the requisite causal relationship.

An award of compensation may not be based on surmise, conjecture or speculation.[8] Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.[9] The fact that a condition manifests itself or worsens during a period of employment[10] or that work activities produce symptoms revelatory of an underlying condition[11] does not raise an inference of causal relationship between a claimed condition and an established employment incident.

Because appellant has not submitted evidence establishing the alleged incident and containing a reasoned discussion of causal relationship, one that soundly explains how the

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[5] *See E.A.*, 58 ECAB 677 (2007); *Arthur C. Hamer*, 1 ECAB 62 (1947).

[6] *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988) (reports not signed by a physician lack probative value).

[7] 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB ___ (Docket No. 06-1564, issued February 27, 2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

[8] *Edgar G. Maiscott*, 4 ECAB 558 (1952).

[9] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

[10] *E.A.*, *supra* note 5; *Albert C. Haygard*, 11 ECAB 393, 395 (1960).

[11] *D.E.*, 58 ECAB 448 (2007); *Fabian Nelson*, 12 ECAB 155,157 (1960).

established employment incident caused or aggravated a firmly diagnosed medical condition, the Board finds appellant has not established fact of injury

CONCLUSION

The Board finds appellant has not established that he sustained an injury in the performance of duty causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the June 18, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2010
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