United States Department of Labor
Employees' Compensation Appeals Board

A.H., Appellant	)	
and	)	**Docket No. 10-650**
	)	**Issued: September 17, 2010**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, El Paso, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 20, 2010 appellant filed a timely appeal from a November 25, 2009 merit decision of the Office of Workers' Compensation Programs. 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 met his burden of proof in establishing that he developed a scleral abrasion to the right eye in the performance of duty on December 6, 2008.

FACTUAL HISTORY

On December 6, 2008 appellant, then a 24-year-old border patrol agent, filed a traumatic injury claim alleging that he developed a scleral abrasion to his right eye that day as a result of a single vehicle rollover accident at about 2:30 p.m. Appellant's supervisor, Todd Watkins, stated that the incident occurred during regular work hours and that appellant was injured in the performance of duty. The form states that the injury was not caused by a third party and

appellant received medical attention that day at Gila Regional Medical Center. Mr. Watkins indicated that appellant faced no lost time but incurred or expected to incur medical expenses.

In a letter dated October 1, 2009, the Office requested additional factual and medical information from appellant. Appellant did not submit any additional information.

By decision dated November 25, 2009, the Office denied appellant's claim finding that the evidence was insufficient to establish that the event occurred as alleged and that there was no medical evidence that provided a diagnosis, which could be connected to the claimed event.[1]

LEGAL PRECEDENT

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.[2] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[3] 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. This medical opinion must include an accurate history of the employee's employment injury, and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[4]

[1] Following the Office's November 25, 2009 decision, appellant submitted additional new evidence to the Office. As this evidence was not before the Office at the time of its final decision, the Board may not review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[4] *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

The Board finds that appellant failed to establish that he sustained an injury while in the performance of duty on December 6, 2008.

The evidence received prior to the November 25, 2009 decision does not provide any details regarding appellant's injury. Appellant submitted a Form CA-1 but did not provide the Office with any medical evidence to establish his claim. The Form CA-1 simply recounted the incident as alleged by appellant with comments from his supervisor. Appellant failed to submit any rationalized medical opinion evidence based on a complete factual and medical background to support a causal relationship between his right eye injury and motor vehicle accident on December 6, 2008. There is no evidence of any examination or treatment, history of the injury, description of a physician's findings, results of any tests performed or firm medical diagnosis. There is no medical opinion from a physician addressing whether there is a causal relationship between his claimed right eye condition and the accident of December 6, 2008.

On October 1, 2009 the Office informed appellant of the evidence needed to support his claim; however, the record before the Board contains no medical evidence. Evidence submitted by appellant after the final decision cannot be considered by the Board. Appellant may submit this new evidence, along with a request for reconsideration, to the Office. As previously noted, the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its decision. Therefore, appellant failed to provide the factual and medical evidence required to establish a *prima facie* claim.[5]

CONCLUSION

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained a traumatic injury on December 6, 2008 in the performance of duty.

[5] *See Richard H. Weiss*, 47 ECAB 182 (1995).

ORDER

IT IS HEREBY ORDERED THAT the November 25, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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