United States Department of Labor
Employees' Compensation Appeals Board

R.C., Appellant	)	
and	)	**Docket No. 11-1032**
	)	**Issued: December 13, 2011**
DEPARTMENT OF THE TREASURY, TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, Dallas, 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 March 22, 2011 appellant filed a timely appeal from a December 3, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden to establish that he sustained a traumatic injury in the performance of duty on October 15, 2010.

FACTUAL HISTORY

On October 18, 2010 appellant, then a 47-year-old special agent, filed a Form CA-1 alleging that his motor vehicle was struck by a speeding vehicle on October 15, 2010 while

[1] 5 U.S.C. § 8101 *et seq.*

attempting to make a left turn. He claimed a sprained ankle, hip and neck soreness and limited jaw movement. Appellant did not incur any time loss from work. The employing establishment did not controvert the claim.

OWCP informed appellant in an October 27, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to furnish medical reports from a physician explaining how the October 15, 2010 accident contributed to a diagnosed condition.[2] OWCP did not receive a response.

In a memorandum dated November 5, 2010, the employing establishment explained that appellant was in the performance of duty, travelling between his duty station and his approved Health Improvement Program, at the time of the incident.

By decision dated December 3, 2010, OWCP denied appellant's claim, finding that he did not submit any medical evidence to demonstrate that the accepted October 15, 2010 employment incident caused a diagnosed jaw, neck, ankle, hip or ankle injury.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[3] including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.[4] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment

[2] In a separate October 27, 2010 letter, OWCP advised appellant that the circumstances of his case indicated that his injury may have been caused by a responsible third party and that he may be subject to FECA's subrogation provisions. *See* 5 U.S.C. §§ 8131-8192; 20 C.F.R. §§ 10.705-10.719.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *T.H.*, 59 ECAB 388 (2008).

factors. The opinion of the physician must be based on a complete factual and medical background, 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.[7]

ANALYSIS

The evidence of record supports that appellant's motor vehicle was struck by a speeding vehicle on October 15, 2010 in the performance of duty. Nonetheless, appellant failed to provide any medical reports when he filed his traumatic injury claim on October 18, 2010 and after OWCP advised him in an October 27, 2010 letter to furnish these reports within 30 days. As no medical evidence was offered to show that the accepted October 15, 2010 employment incident caused or contributed to a diagnosed jaw, neck, ankle, hip or ankle injury, he failed to establish his *prima facie* claim for compensation.[8]

Appellant contends on appeal that he supplied medical reports to OWCP. As noted, the evidence of record at the time of the December 3, 2010 decision does not contain any such documentation.

The Board notes that appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.[9] However, appellant may submit new evidence or argument as part of a formal written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on October 15, 2010.

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[8] *See Donald W. Wenzel*, 56 ECAB 390 (2005). The Board notes that a case may be accepted in the absence of rationalized medical opinion evidence in clear-cut traumatic injury claims "where the fact of injury is established and is clearly competent to cause the condition described (for instance, a worker falls from a scaffold and breaks an arm)…." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(2) (September 2011). However, this provision also adds: "The physician's affirmative statement is sufficient to accept the claim. *Id.* As appellant failed to submit any medical evidence, this exception does not apply.

[9] 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the December 3, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 13, 2011
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