United States Department of Labor
Employees' Compensation Appeals Board

D.A., Appellant	)	
and	)	**Docket No. 11-1224**
	)	**Issued: December 14, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Vandalia, 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:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 26, 2011 appellant, through his attorney, filed a timely appeal from a March 9, 2011 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 of proof to establish that he sustained a traumatic injury in the performance of duty on December 8, 2009.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 8, 2009 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim alleging that he was walking on a sidewalk that day when he felt a pop in his right foot and experienced numbness. He did not incur any lost time from work.[2]

In a medical report dated December 8, 2009, Dr. Rex T. Yang, a Board-certified occupational physician, related that appellant was delivering mail that day when he felt a pop in his right foot. On examination, he did not observe any apparent abnormalities to account for appellant's complaints of numbness. X-ray results were negative.[3] Dr. Yang diagnosed right foot sprain. In occupational injury and attending physician's reports also dated December 8, 2009, he checked the "yes" box in response to form questions asking whether appellant's condition was the result of his employment.[4]

In a December 15, 2009 follow-up report, Dr. Yang noted that appellant exhibited diminished sensation of first, second and third toe numbness on examination. He diagnosed right foot sprain.

A January 5, 2010 electromyogram (EMG) obtained by Dr. Ryan R. Maenpa, a Board-certified physiatrist, demonstrated subtle sensorimotor axonal peripheral neuropathy. Dr. Yang cited these results in a January 15, 2010 report, adding that he evaluated appellant and found sensory deficit over the right plantar aspect.[5]

On July 6, 2010 appellant filed a claim for a schedule award.

OWCP informed appellant in a July 27, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a narrative medical report from a physician explaining how the purported December 8, 2009 event contributed to a right foot condition.[6]

Appellant submitted a July 30, 2010 report from Dr. Martin D. Fritzhand, an occupational physician and Board-certified urologist, who advised that appellant was delivering mail on December 8, 2009 when he felt a pop in his right foot. Subsequently, he sustained localized right foot pain and toe numbness. On examination, Dr. Fritzhand observed diminished sensation of

[2] Appellant previously filed a claim for a January 21, 2003 right ankle injury. OWCP File No. xxxxxx379. In addition, the evidence of record contains references to preexisting left foot and bilateral knee conditions, none of which are presently before the Board.

[3] A December 8, 2009 x-ray report from by Dr. Wilfredo J. Suntay, a Board-certified diagnostic radiologist, is part of the case record.

[4] All three December 8, 2009 reports from Dr. Yang detailed similar clinical findings, history of injury and diagnosis.

[5] Appellant also provided various work release documents from Dr. Yang for the period December 8, 2009 to January 15, 2010.

[6] OWCP pointed out that appellant's claim was originally received as a simple, uncontroverted case resulting in minimal or no lost time from work and payment was approved for limited medical expenses without formal adjudication.

the right hallux and plantar aspect of the medial forefoot to pinprick and light touch as well as the absence of an Achilles tendon reflex.[7]

By decision dated September 3, 2010, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that the accepted December 8, 2009 employment incident was causally related to a right foot condition.

Appellant's counsel requested a telephonic hearing, which was held on January 13, 2011. Appellant testified that he was walking on a concrete sidewalk while on his delivery route when he felt his right foot pop.

In a January 28, 2011 letter, the employing establishment controverted the claim, asserting that appellant did not furnish adequate medical evidence.

On March 9, 2011 OWCP's hearing representative modified the September 3, 2010 decision to deny appellant's claim on the basis that he did not experience the December 8, 2009 incident as alleged.

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,[8] including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.[9] 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.[10]

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.[11]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[12] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement,

[7] Dr. Fritzhand also calculated a one percent right lower extremity impairment rating.

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

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

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

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

[12] *Gregory J. Reser*, 57 ECAB 277 (2005); *R.T.*, Docket No. 08-408 (issued December 16, 2008).

however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[13]

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 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.[14]

ANALYSIS

By decision dated September 3, 2010, OWCP accepted that appellant was delivering mail on December 8, 2009 when he felt a pop in his right foot, but denied his claim because the medical evidence did not sufficiently establish that this event caused or contributed to a right foot condition. Following a January 13, 2011 oral hearing, OWCP's hearing representative issued a March 9, 2011 decision affirming denial on the basis that appellant did not experience the December 8, 2009 incident.

The Board finds that appellant provided sufficient evidence to establish that the December 8, 2009 employment incident occurred as alleged. As noted, an employee's statement alleging that an incident occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. The evidence of record establishes that appellant walked his route on the day in question. In the instant case, the history of injury specified in appellant's Form CA-1 and obtained by Drs. Yang and Fritzhand remained consistent.[15] The case record also shows that appellant promptly filed his claim and received medical treatment on December 8, 2009. The Board notes that this factual issue was previously resolved in appellant's favor as OWCP originally accepted in its September 3, 2010 decision that an employment incident occurred on December 8, 2009.[16] In view of the totality of the evidence, the Board finds that OWCP's hearing representative affirmed the September 3, 2010 denial on erroneous grounds.

[13] *Betty J. Smith*, 54 ECAB 174 (2002).

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

[15] *See Caroline Thomas*, 51 ECAB 451 (2000) ("[a] consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident").

[16] *See, e.g., V.T.*, Docket No. 09-234 (issued July 28, 2009).

The Board finds that appellant did not provide sufficient medical evidence demonstrating that his right foot condition was due to the accepted December 8, 2009 employment incident. In two December 8, 2009 reports, Dr. Yang indicated that appellant sustained a right foot sprain while in the performance of duty by marking the suitable checkbox. These responses, however, did not offer sufficient medical rationale explaining how the December 8, 2009 employment incident pathophysiologically caused appellant's condition.[17] An opinion on causal relationship that consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value.[18]

Dr. Maenpa's January 5, 2010 EMG report, Dr. Fritzhand's July 30, 2010 report and Dr. Yang's remaining records from December 8, 2009 to January 15, 2010 were of limited probative value because none offered an opinion regarding the cause of appellant's injuries.[19] In the absence of rationalized medical opinion evidence, appellant failed to meet his burden of proof.

Appellant's counsel argues on appeal that the March 9, 2011 decision was contrary to fact and law. As noted, the medical evidence did not sufficiently establish that the accepted December 8, 2009 employment incident was causally related to appellant's foot injury.

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 December 8, 2009.

[17] *See Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[18] *Alberta S. Williamson*, 47 ECAB 569 (1996).

[19] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2011 decision of the Office of Workers' Compensation Programs be affirmed as modified.

Issued: December 14, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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