United States Department of Labor
Employees' Compensation Appeals Board

H.G., Appellant	)	
and	)	**Docket No. 10-2125**
	)	**Issued: May 18, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Dallas, TX, Employer	)	

Appearances:
Appellant, pro se
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 August 19, 2010 appellant filed a timely appeal from a May 10, 2010 merit decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act[1] and 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 to establish that he sustained an injury in the performance of duty on March 4, 2010.

FACTUAL HISTORY

On March 11, 2010 appellant, then a 62-year-old laborer custodial, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury on March 4, 2010. He failed to

[1] 5 U.S.C. § 8101 *et seq.*

describe his injury or its relationship to his employment. Appellant stopped work on March 6, 2010 and notified his employer on March 11, 2010.

The employing establishment controverted the claim. By letter dated March 20, 2010, it stated that appellant's claim failed to establish causal relationship, fact of injury or performance of duty.

By letter dated March 31, 2010, the Office informed appellant that the only evidence received in support of his claim was the Form CA-1 with no injury stated. It requested additional factual and medical evidence and asked that he respond to the provided questions within 30 days.

In an undated narrative statement, appellant reported that on March 4, 2010 at 9:35 p.m., he was driving a powered industrial vehicle (jitney) back and forth to the recycle area and hit a bad area on the floor causing damage to his leg.

In a March 6, 2010 emergency department report, Dr. Gregory Keelen, Board-certified in emergency medicine, noted that appellant had leg pain and pain in his calf when walking with medial thigh discomfort. He reported that appellant had slipped a few days earlier at work, experienced soreness from the left groin to the left medial knee and developed erythema and swelling of the left leg. Dr. Keelen diagnosed cellulitis of the left lower extremity and muscle strain.

Appellant submitted a prescription sheet and a return to work note which advised that he could not return to work until March 9, 2010. An April 8, 2010 duty status report noted that appellant had injured himself on March 4, 2010 with cellulitis when he rolled across the floor.

In a second letter dated March 24, 2010, the employing establishment controverted the claim. It noted that the employing established had attempted to recreate the alleged incident by using the same jitney. The operator could not feel the bad area of the floor or find the flooring to be in bad condition. The employing establishment also stated that the jitney was operated by hand and all the controls are on the steering column and no controls were operated by foot.

In a September 16, 2009 radiology report, Dr. Michelle Walters, a doctor of osteopathy, diagnosed a mild sprain medial patellar retunaculum, a small joint effusion, focal area of degeneration anterior medial femoral condyle and a small focal area of infrapatellar tendinosis.

By decision dated May 10, 2010, the Office denied appellant's claim finding that the evidence did not establish that the March 4, 2010 incident occurred, as alleged. It noted that the circumstances surrounding the injury on the medical report dated March 6, 2010 differed from what he alleged in his statement.[2]

[2] The Board notes that appellant submitted additional evidence after the Office rendered its May 10, 2010 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision and therefore, this additional evidence cannot be considered on appeal. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal written request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

LEGAL PRECEDENT

An employee seeking benefits under the Act[3] has the burden of establishing 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 filed within the applicable time limitation period of the Act[4] and that an injury was sustained in the performance of duty.[5] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

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.[7] Once an employee establishes that he sustained an injury in the performance of duty, he has the burden of proof to establish that any subsequent medical condition or disability for work, for which he claims compensation is causally related to the accepted injury.[8]

ANALYSIS

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on March 4, 2010.

A claimant must establish all of the elements of his claim in order to prevail. Appellant must prove his employment, the time, place and in the manner of injury, a resulting personal injury and that his injury arose in the performance of duty. He alleged that on March 4, 2010 he was driving a jitney back and forth to the recycle area and hit a bad area on the floor which caused damage to his leg.

Appellant did not provide sufficient detail needed to establish that the incident occurred in the manner alleged.[9] He failed to adequately describe the circumstances of his injury, how he damaged his leg, or how the floor and jitney were involved in his accident. Appellant did not explain whether he struck his leg on the jitney. He failed to submit evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury.[10] Appellant did not

[3] 5 U.S.C. §§ 8101-8193.

[4] *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

[8] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

[10] *Paul Foster*, 56 ECAB 1943 (2004).

report the incident to his supervisor until several days later or identify any possible witness to the event. The employing establishment controverted the claim and examined the floor where the accident was alleged to have occurred. Upon inspection, there was no bad area of the floor as appellant alleged and the operation of the jitney would not have involved the use of his leg or foot.

In a March 6, 2010 medical report, Dr. Keelen diagnosed cellulitis of the lower extremity and muscle strain. He reported that appellant slipped at work a few days before. While Dr. Keelen provided a diagnosis, his report does not support appellant's allegation that he injured his leg while operating the jitney. He failed to provide an opinion on the cause of appellant's injury. Dr. Keelen's report did not offer any rationalized medical opinion or a history of injury conforming to appellant's account of the March 4, 2010 incident.

The remaining medical evidence of record fails to establish that the incident occurred in the manner alleged. The radiology report, prescription sheet, return to work note and duty status report all fail to address the manner of how the March 4, 2010 incident occurred. The April 8, 2010 duty status report noted that appellant injured himself when he rolled across the floor. This history fails to provide sufficient detail as to how the incident occurred and differs significantly from the accounts by appellant or Dr. Keelen. Appellant failed to provide sufficient evidence to establish that the incident occurred at the time, place and in the manner alleged and his claim was properly denied.[11]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on March 4, 2010.

[11] Appellant may submit additional evidence, together with a formal written request for reconsideration, to the Office within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a). *See supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated May 10, 2010 is affirmed.

Issued: May 18, 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