

FACTUAL HISTORY

On January 18, 2010 appellant, then a 42-year-old park ranger, filed a traumatic injury claim alleging that on January 17, 2010 he hurt the left side of his back when he was struck by a car while conducting a traffic stop. He was struck by a rearview mirror in the low back.

By letter dated January 27, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit medical evidence, including a rationalized medical opinion from an attending physician which described a history of injury and provided dates of examination and treatment, findings, test results, a diagnosis together with medical reasons on why the diagnosed condition was caused or aggravated by the January 17, 2010 incident. Appellant was allotted 30 days to submit additional evidence. He did not respond.

In a March 5, 2010 decision, OWCP denied appellant's claim. It found that he did not submit any medical evidence to establish that he sustained an injury causally related to the accepted January 17, 2010 employment incident.

On March 17, 2010 appellant requested a review of the written record.

Appellant submitted medical records from Pocono Medical Center. A January 17, 2010 laboratory report stated that appellant's urinalysis test results were negative. In a January 17, 2010 emergency room report, Dr. Nancy L. Gabana, Board-certified in emergency medicine, obtained a history of the accepted employment incident and appellant's medical, social and family background. She listed findings on physical, psychiatric and neurological examination. Dr. Gabana advised that appellant had left lower back/flank pain secondary to the January 17, 2010 employment incident. In a January 17, 2010 emergency room discharge report, Dr. Gabana noted that appellant was given Motrin to treat the diagnosed back condition.

In an undated narrative statement, appellant related that after Michael Klubek, a park ranger and reporting officer, conducted a criminal investigation of the accepted employment incident, he took him to Pocono Medical Center for medical treatment.

In an unsigned accident form report, Park Ranger Klubek provided findings of his on-the-scene investigation of the January 17, 2010 employment incident. After he cleared the scene, he took appellant to Pocono Medical Center for treatment of his low back pain. Park Ranger Klubek submitted witness statements and photographs of the damaged vehicles involved in the accepted incident.

In a July 28, 2010 decision, OWCP's hearing representative affirmed the March 5, 2010 decision. He found that the medical evidence was insufficient to establish that appellant sustained an injury causally related to the accepted January 17, 2010 employment incident.²

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 FECA; that the claim was filed within applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP 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 or exposure, which is alleged to have occurred.⁶ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁷

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the

² On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before OWCP at the time of the final decision. *See* 20 C.F.R. § 501(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003). Appellant may resubmit this evidence and legal contentions to OWCP accompanied by a request for reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

⁶ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁷ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁸ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

identified factors.⁹ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹⁰

ANALYSIS

OWCP accepted that appellant was struck by a car on January 17, 2010 while working as a park ranger. The Board finds that the medical evidence of record is insufficient to establish that his back condition was caused or aggravated by the January 17, 2010 employment incident.

Dr. Gabana's reports found that appellant had left lower back/flank pain secondary to the January 17, 2010 employment incident. The Board has held that pain is generally a symptom, not a firm medical diagnosis.¹¹ A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹² Dr. Gabana did not provide a firm medical diagnosis of a back condition resulting from the January 17, 2010 employment incident. Moreover, he did not explain how an accepted incident caused or contributed to appellant's low back condition. Lacking this medical explanation, the Board finds that Dr. Gabana's reports are insufficient to establish appellant's claim.¹³

The laboratory test results did not provide any medical opinion addressing whether appellant sustained an injury causally related to the January 17, 2010 employment incident.¹⁴ The Board finds, therefore, that this evidence is insufficient to establish his claim.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a back injury causally related to the accepted January 17, 2010 employment incident. While appellant contended that the medical evidence of record established that he sustained an employment-related back injury on January 17, 2010; for the reasons stated, the Board finds that he did not submit sufficiently rationalized medical evidence to establish his claim.

Although OWCP denied appellant's claim of injury, it did not adjudicate the issue of whether he should be reimbursed for incurred medical expenses. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee with a properly executed CA-16 within four hours.¹⁵ Pursuant to section 8103 of FECA,¹⁶ however,

⁹ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Charles E. Evans*, 48 ECAB 692 (1997).

¹¹ *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

¹² *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

¹³ *S.S.*, 59 ECAB 315, 322 (2008); *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

¹⁴ *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁵ *Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (September 1995).

¹⁶ 5 U.S.C. § 8103.

OWCP has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances.¹⁷ It may exercise its discretion to authorize medical care even if a Form CA-16 has not been issued and the claim is subsequently denied. Payment in such situations is determined on a case-by-case basis.¹⁸

Park Ranger Klubek verified that appellant was struck by a car while conducting a traffic stop. He was transported to Pocono Medical Center by Park Ranger Klubek where he received treatment that day. In denying appellant's claim, OWCP failed to consider whether emergency or otherwise unusual circumstances were present such that reimbursement of medical expenses would be appropriate in this case. The Board finds that the circumstances of the case warrant additional development of this issue. The case will be remanded to OWCP for further development, to be followed by the issuance of a *de novo* decision on this aspect of appellant's claim.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained a back injury in the performance of duty on January 17, 2010, as alleged. The case is remanded to OWCP for adjudication of the issue of reimbursement of medical expenses related to his treatment on January 17, 2010.

¹⁷ *Val D. Wynn, supra* note 15; 20 C.F.R. § 10.304.

¹⁸ *See Thomas W. Keene*, 42 ECAB 623 (1991); *see also* Federal (FECA) Procedure Manual, *supra* note 15.

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2010 decision of the Office of Workers' Compensation Programs is affirmed in finding that appellant did not meet his burden of proof. The decision is set aside as to the issue of reimbursement of medical expenses. The case is remanded for further action consistent with this decision.

Issued: October 26, 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