

FACTUAL HISTORY

On August 5, 2009 appellant, then a 42-year-old Office of Inspector General special agent, filed a traumatic injury claim alleging that he was injured on July 29, 2009 when a letter carrier he was investigating punched his chest and pushed him out of a vehicle causing him to fall on the ground. Appellant landed on his hands and sustained minor abrasions to both palms. He also sustained right shoulder bruising and left-sided chest pain.

Appellant submitted prescription slips dated July 29 and 30, 2009. A chart note from General Medical dated July 29, 2009 was submitted which is largely illegible but which noted a history of blunt trauma.

On August 18, 2009 OWCP requested appellant submit further evidence in support of his claim, including a medical report that contained a diagnosis of his condition, and provided medical rationale explaining whether the condition diagnosed was caused or exacerbated by specific factors of his employment. The letter specified that he had 30 days to submit the requested evidence.

In a September 18, 2009 decision, OWCP accepted that the July 29, 2009 incident occurred as alleged, but denied the claim as appellant had not submitted sufficient medical evidence to substantiate a diagnosed condition causally related to the accepted incident.

Appellant requested reconsideration on September 1, 2010. He submitted results of a chest x-ray dated July 29, 2009, which was electronically signed by Oscar Alarcon.³ The x-ray report recorded findings that “lungs are clear of consolidation. Cardiac silhouette is within normal limits. Costophrenic angles are free.” It also noted that there was “no evidence of pulmonary consolidation.”

Appellant submitted a September 15, 2009 medical note from Dr. David Storer-Blasini, Board-certified in internal medicine, who stated that appellant had a “history of being attacked by postal employee, which caused a fall,” and sustained trauma to his chest and abrasion to the hands.

OWCP also received an October 28, 2009 letter from the Department of Justice. It informed appellant of the criminal conviction of the letter carrier who assaulted him on July 29, 2009.

By decision dated December 2, 2010, OWCP found that appellant did not establish a medical condition causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden to establish the essential elements of his claim including the fact that the individual is an employee of the United States

³ The Board cannot verify whether Oscar Alarcon is a physician.

⁴ 5 U.S.C. §§ 8101-8193.

within the meaning of FECA, that the claim was timely filed, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is 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 the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

ANALYSIS

OWCP accepted that appellant was assaulted on July 29, 2009. On December 2, 2010 it denied the claim based on the insufficiency of the medical evidence. The Board finds that appellant has established that he sustained abrasions of his palms caused by the accepted incident; however he has not submitted sufficient medical evidence to establish that he sustained a shoulder or chest injury as a result of the accepted assault. Appellant explained that he was pushed from his vehicle on July 29, 2009. He broke his fall with his hands and landed on his palms, sustaining abrasions. In his September 15, 2009 report, Dr. Storer-Blasini provided an accurate history of the accepted incident and provided findings of abrasions to appellant's palm.⁸ Given the simple nature of this injury, the Board accepts that he sustained abrasions to his palms on July 29, 2009.

Appellant has submitted insufficient medical evidence, however, to establish other medical conditions, caused by the accepted incident. None of the evidence of record diagnosed appellant with a shoulder or chest condition. The July 29, 2009 diagnostic test results indicated there was "no evidence of pulmonary consolidation." Dr. Storer-Blasini's report generally indicated that the attack led to trauma to appellant's chest; but any such trauma was not described in detail nor was a firm medical diagnosis provided. His report does not satisfy appellant's burden of proof.

⁵ *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁷ *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁸ In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims a rationalized medical opinion supporting causal relationship is required. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(2) (June 1995).

CONCLUSION

The Board finds that appellant sustained abrasions to his palms on July 29, 2009. Appellant has not established that he sustained a shoulder or chest injury due to the July 29, 2009 incident.

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2010 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: October 4, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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