United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 11-941**
	)	**Issued: October 20, 2011**
DEPARTMENT OF THE ARMY, CIVIL PERSONNEL ADVISORY CENTER, Fort Jackson, SC, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 4, 2011 appellant filed a timely appeal from an October 25, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury on September 7, 2010 in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the issuance of the October 25, 2010 OWCP's decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence, together with a formal written request for reconsideration to OWCP, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.

FACTUAL HISTORY

On September 14, 2010 appellant, then a 40-year-old police officer, filed a traumatic injury claim alleging that he sustained an injury on September 7, 2010 when exposed to rabies from contacting fox blood splatter on his police gear and his face as a result of striking the fox with his baton. The fox blood was later discovered to have confirmed rabies. Appellant received eight rabies vaccine shots and was advised to receive three more within the next few weeks.

On September 17, 2010 OWCP requested that appellant submit additional evidence, including a medical report containing a diagnosis of his condition and medical rationale explaining how the condition was causally related to his employment activities.

Appellant submitted a sworn statement dated September 14, 2010. He described the incident where a fox attempted to bite him, and he subdued it with a baton. Appellant also submitted a discharge summary dated September 10, 2010 from Palmetto Health, which included patient education materials on rabies and its vaccine. The educational material indicated that rabies was caused by a virus that enters the body during the bite of an infected animal.

In a September 10, 2010 note, Dr. Carlisle[3] certified that appellant was seen in the Palmetto Health clinic at 1:00 p.m. on September 10, 2010 and was excused from work until 5:00 p.m. on the same day. The note indicated that appellant was advised to report to Palmetto Health Richland for human rabies immune globulin (HRIG) and vaccine.

On October 18, 2010 appellant submitted a report of work status form to OWCP, which indicated that he returned to work with no restrictions on September 11, 2010.

By decision dated October 25, 2010, OWCP denied appellant's claim on the grounds that the medical evidence is insufficient to establish fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden to establish the essential elements of her claim including the fact that the individual is an employee of the United States 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

[3] Dr. Carlisle's first name was not stated.

[4] 5 U.S.C. §§ 8101-8193.

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

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]

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical 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 of the claimant, 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.[8]

Simple exposure to a workplace hazard, such as an infectious agent, does not constitute a work-related injury entitling an employee to medical treatment under FECA. The employer therefore should not use a Form CA-16 to authorize medical testing for an employee who has merely been exposed to a workplace hazard, unless the employee has sustained an identifiable injury or medical condition as a result of that exposure.[9]

FECA does not authorize payment for preventive measures such as vaccines and inoculations and in general, preventive treatment may be a responsibility of the employing establishment under the provisions of 5 U.S.C. § 7901 (*see* 20 C.F.R. § 10.303).[10] However, OWCP can authorize treatment, even though such treatment is designed, in part, to prevent further injury: actual or probable exposure to a known contaminant due to an injury, thereby requiring disease-specific measures against infection, including administration of rabies vaccine for a bite from a rabid or potentially rabid animal.[11]

ANALYSIS

OWCP accepted that the fox blood exposure incident occurred as alleged on September 7, 2010. The Board finds that appellant has not met his burden of proof as he has not submitted sufficient medical evidence to establish that he sustained injury causally related to the accepted incident. Appellant has not submitted any medical evidence which contains a firm diagnosis of his condition or an opinion regarding the cause of the condition. The discharge summary from the Palmetto Health clinic, dated September 10, 2010, provided only educational

[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] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 558 (1952).

[9] 20 C.F.R. § 10.303(a).

[10] *See id.* at § 10.313.

[11] *See id*. at § 10.313(b).

material regarding rabies and the rabies vaccine. There was no diagnosis indicated in that document. Similarly, the note issued by Dr. Carlisle merely advised appellant to receive HRIG and vaccine, without addressing whether appellant had been infected by the virus.

FECA does not authorize payment for preventative treatment except in limited circumstances. Appellant did not claim, nor did the medical evidence suggest that he was bitten by the fox; his only exposure to the rabies virus was having the fox's blood splatter on his face and police gear. The medical reports do not diagnose him with any injury; and, as noted above, simple exposure to rabies does not constitute a work-related injury entitling him to medical treatment under FECA. In this scenario, OWCP cannot authorize payment for the vaccination shots under 20 C.F.R. § 10.313(b), as the authorization requires an actual or probable exposure to a known contaminant "due to an injury." Pursuant to section 10.303 appellant may however seek reimbursement from his employing establishment for the preventive care vaccinations.

As there is no probative, rationalized medical report containing a diagnosis of appellant's condition and rationale addressing how his claimed injuries were caused by his employment, appellant has not met his burden of proof in establishing that he sustained an traumatic injury in the performance of duty causally related to the accepted event.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury on September 7, 2010 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 25, 2010 is affirmed.

Issued: October 20, 2011
Washington, DC

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

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

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