

**United States Department of Labor
Employees' Compensation Appeals Board**

S.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
O'Fallon, IL, Employer**

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**Docket No. 11-321
Issued: September 9, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 22, 2010 appellant, through his attorney, filed a timely appeal of an October 20, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying his 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.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on February 13, 2010, as alleged.

Appellant's attorney contends on appeal that OWCP's decision is contrary to fact and law.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 22, 2010 appellant, then a 45-year-old mail carrier, filed a traumatic injury claim alleging that, on February 13, 2010, due to weather conditions, he slipped and fell on concrete injuring his head and hip. In an accompanying statement, he states that on February 13, 2010, after delivering mail to a house, he started down a step and slipped and fell, hitting his head. Appellant noted that the weather conditions were wet with snow still on the ground. He initially declined medical attention but felt sick and off balance all weekend after the fall. On February 16, 2010 appellant went to work feeling short of breath and light-headed and could not complete his route. He asked his supervisor to take him to the emergency room and then passed out. On March 3, 2010 the employing establishment controverted the claim.

Appellant went to the emergency room at Memorial Hospital in Belleville, Illinois on February 16, 2010. In a report of that date, Dr. Leopoldo Pardo, III, a Board-certified internist, obtained a history of appellant losing consciousness while standing three days prior; listed a discharge diagnosis of bilateral cerebral lesions, rule out multiple sclerosis; and history of Vitamin D deficiency. He stated that appellant could not go back to work until neurological testing and evaluation was completed because of a high risk for falling which would occur on the job.

In a February 18, 2010 report, Dr. Panduranga Kini, a Board-certified neurologist, stated that appellant was admitted because of two episodes. She described the incident when appellant fell while delivering mail and a second episode, when he was in the ambulance and had a seizure-like activity “for 30 seconds or so.” Dr. Kini stated that she was not certain whether it was a seizure or syncope, but that the former was more likely. She noted that appellant’s electroencephalogram revealed no seizure activity and a magnetic resonance imaging scan showed some nonspecific nonenhancing lesions. Dr. Kini instructed him not to drive until there was more information.

By decision dated April 14, 2010, OWCP denied appellant’s claim. It accepted that appellant fell on stairs as alleged but found the medical evidence insufficient to establish causal relations.

By letter dated April 29, 2010, appellant, through his attorney, requested a telephone hearing. In a March 29, 2010 return to work note, Dr. Rajiv Patel, a Board-certified internist, wherein he indicated that appellant was under his care from March 22 through 29, 2010 and was not able to perform his normal activities during this time. He noted that appellant was able to return to work on March 29, 2010 with no restrictions.

In May 17, 2010 report, Dr. William Thom, a physician Board-certified in anesthesiology and pain medicine, stated that appellant was being treated for injuries sustained in a fall on February 13, 2010. Appellant was undergoing concurrent therapies for pain management, physical therapy and chiropractic treatment in an attempt to address his injuries. Based on the physical nature of appellant’s job as a mail carrier and his physical limitations, Dr. Thom deemed it in the best interest of his health if appellant not return to work. He noted that appellant has started a course of lumbar epidural steroid injections in an attempt to treat his pain. In a report of May 21, 2010, Dr. Thom noted that appellant complained of bilateral

buttock, thigh and calf pain for one month. He noted chronic gradual onset, with no history of trauma or inciting event. Dr. Thom diagnosed sacroiliitis not elsewhere classified; lumbago, displacement of lumbar intervertebral disc without myelopathy; spinal stenosis of lumbar region; thoracic or lumbosacral neuritis or radiculitis, unspecified; degeneration of lumbar or lumbosacral intervertebral disc; lumbosacral spondylosis without myelopathy; postlaminectomy syndrome of lumbar region; myalgia and myositis, unspecified; cervicgia and headache. Dr. Thom continued lumbar steroid injections.

At a hearing on August 3, 2010, appellant stated that he had a 60 percent service-connected disability due to a back injury he received while in the United States Marine Corps. He noted incidents of heat exhaustion while with the Marines, but stated that he never passed out. Appellant discussed the February 13, 2010 fall and an incident of several days later when he lost consciousness.

In an October 20, 2010 decision, OWCP's hearing representative affirmed the April 14, 2010 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 the applicable time limitations of the Act, that an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

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 which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Id.*

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.⁵

ANALYSIS

The Office accepted that the February 13, 2010 employment incident occurred as alleged. Appellant slipped and fell while delivering mail on that date. The Board finds that he did not submit rationalized medical evidence sufficient to establish an injury as a result of the fall. He did not stop work and did not seek treatment until February 16, 2010, when seen at a local emergency room. Neither Dr. Pardo, Dr. Kini nor Dr. Patel stated any conclusion as to a cause of appellant's injuries. Dr. Thom noted in his May 17, 2010 report that appellant was being treated for injuries sustained during a fall on February 13, 2010. However, Dr. Thom just repeated appellant's history; he did not provide a rationalized medical opinion supporting this conclusion. In a report May 21, 2010, Dr. Thom noted that he was treating appellant for injuries to his buttock thigh and calf, but indicated that there was no history of trauma or inciting event.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.⁶ There is insufficient medical evidence to establish that appellant sustained an injury on February 13, 2010. Accordingly, the Board finds that appellant failed to meet her burden of proof.

Appellant may submit new evidence or argument with a 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 has not established that he sustained an injury in the performance of duty on February 13, 2010, as alleged.

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *John D. Jackson*, 55 ECAB 465 (2004); *William Nimitz*, 30 ECAB 57 (1979).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 20, 2010 is affirmed.

Issued: September 9, 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