United States Department of Labor
Employees' Compensation Appeals Board

C.L., Appellant	)	
and	)	**Docket No. 11-782**
	)	**Issued: September 29, 2011**
DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, Casper, WY, 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 February 8, 2011 appellant filed a timely appeal from the October 22, 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 this case.

ISSUE

The issue is whether appellant sustained a left hip injury while in the performance of duty on December 15, 2009.

FACTUAL HISTORY

On December 18, 2009 appellant, a 72-year-old field representative, filed a traumatic injury claim alleging that he sustained injuries to his left hip when he slipped and fell on ice on December 15, 2009 while walking to a trailer in winds gusting up to 35 miles a hour.

[1] 5 U.S.C. § 8101 *et seq.*

Appellant submitted physical therapy notes from Dr. Tim Klinker, a treating physician, for the period December 18, 2009 through April 12, 2010. Dr. Klinker diagnosed "left hip pain/trauma," with an onset date of December 15, 2009, prescribed occupational and physical therapy two to three times a week and ordered an x-ray of the left hip. He noted that on December 15, 2009 appellant slipped and fell on ice, landing on his left hip. Appellant complained of some hip pain while sitting; however, Dr. Klinker observed no bruising or deformity on examination. A December 18, 2009 x-ray of the pelvis and left hip revealed well-preserved joint space; no significant deformity; no acute fracture or dislocation; and no radiographic evidence of acute bony injury.

On January 27, 2010 Dr. Klinker prescribed continued physical therapy and the use of a transcutaneous electrical nerve stimulator unit for pain. On April 12, 2010 he diagnosed left hip pain and recommended continued physical therapy two to three times a week.

Appellant submitted physical therapy notes dated December 18, 2009 through April 29, 2010, signed by a physical therapist. The December 18, 2009 report of the initial physical therapy evaluation indicated that he slipped on ice and fell on his left hip on December 15, 2010.

In a letter dated September 13, 2010, OWCP informed appellant that the information submitted was insufficient to establish his claim and allowed him 30 days to submit additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

In a December 18, 2009 attachment to the Form CA-1 claim, appellant noted that, on the date in question, he slipped and fell on ice under snow as he was walking to a trailer door in wind gusts up to 30 miles a hour.

Appellant submitted a February 25, 2010 monthly physical therapy reevaluation, signed by Dr. Klinker, who repeated his diagnosis of left hip pain.

In an August 28, 2010 statement, appellant noted that his left hip was still painful, but that his condition had improved. He reported that he had received a course of physical therapy, as prescribed by Dr. Klinker following a left hip x-ray.

By decision dated October 22, 2010, OWCP denied appellant's claim. It accepted that the December 15, 2009 work incident occurred as alleged, but found that the medical evidence provided was insufficient to establish that he had sustained an injury under FECA on December 15, 2009.

On appeal, appellant states that his claim is based on his being hurt on the job. He contends that he completed the proper paperwork, followed his physician's instructions and had no idea that there was a problem with his claim.

LEGAL PRECEDENT

FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[2] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, arising out of and in the course of employment.[3]

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his 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 within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] When an employee claims that he sustained a traumatic injury in the performance of duty, he must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[5]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[6] An award of compensation may not be based on appellant's belief of causal relationship.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[8] Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA.[9]

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[2] *Id*. at § 8102(a).

[3] This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

[4] *Robert Broome*, 55 ECAB 339 (2004).

[5] *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Deborah L. Beatty*, 54 ECAB 340 (2003). *Betty J. Smith*, 54 ECAB 174 (2002). The term injury as defined by FECA, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q)(ee).

[6] *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

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

[8] *Id.*

[9] 20 C.F.R. § 10.303(a).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.[10]

ANALYSIS

OWCP accepted that appellant was a federal employee who timely filed his claim for compensation benefits and that the December 15, 2009 workplace incident occurred as alleged. The issue is whether appellant submitted sufficient medical evidence to establish that the employment incident caused an injury. The medical evidence of record does not contain a rationalized medical opinion explaining how the work incident caused or aggravated a left hip condition or disability. Therefore, appellant has failed to meet his burden of proof.

On December 18, 2009 Dr. Klinker diagnosed "left hip pain/trauma," with an onset date of December 15, 2009, prescribed occupational and physical therapy two to three times a week and ordered an x-ray of the left hip. He noted that on December 15, 2009 appellant slipped and fell on ice, landing on his left hip. Dr. Klinker did not provide a definitive diagnosis pertaining to the left hip condition. The Board has held that pain is generally a symptom, not a firm medical diagnosis and, without objective physical or diagnostic findings to support a condition causing the pain, is not compensable under FECA.[11] Although Dr. Klinker generally noted that appellant injured himself when he fell, Dr. Klinker did not provide an opinion as to the cause of appellant's condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[12] Dr. Klinker did not adequately explain how the accepted incident caused the claimed left hip injury. Therefore, his reports are of diminished probative value and insufficient to establish causal relationship.[13] In follow-up reports, Dr. Klinker repeated his diagnosis of left hip pain but did not further provide a rationalized opinion as to the cause of appellant's condition.

[10] *John W. Montoya*, 54 ECAB 306 (2003).

[11] *See Robert Broome*, 55 ECAB 493 (2004); *John L. Clark*, 32 ECAB 1618 (1981).

[12] *Michael E. Smith*, 50 ECAB 313 (1999).

[13] *See Calvin E. King, Jr*., 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr*., 41 ECAB 843 (1990).

Appellant submitted physical therapy notes for the period December 18, 2009 through April 29, 2010. As physical therapists do not qualify as "physicians" under FECA, the Board finds that these reports do not constitute probative medical evidence.[14]

The remaining medical evidence of record, including disability slips, x-rays and test results that do not contain a diagnosis or an opinion as to the cause of appellant's condition, is of limited probative value.

Appellant expressed his belief that his left hip condition resulted from the December 15, 2009 employment incident. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[15] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[16] Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant's responsibility to submit. Therefore, appellant's belief that his condition was caused by the work-related incident is not determinative.

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit sufficient medical documentation. He has not met his burden of proof to establish that he sustained an injury in the performance of duty causally related to the accepted incident of December 15, 2009.

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 failed to meet his burden of proof to establish that he sustained a traumatic injury in the performance of duty on December 15, 2009.

[14] A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as "physician" as defined in 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

[15] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[16] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 29, 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