United States Department of Labor
Employees' Compensation Appeals Board

Q.M., Appellant	)	
and	)	**Docket No. 12-798**
	)	**Issued: August 15, 2012**
U.S. POSTAL SERVICE, JACKSONVILLE NETWORK DISTRIBUTION CENTER, Jacksonville, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 28, 2012 appellant filed a timely appeal from a February 10, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) that denied his claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 an injury in the performance of duty on December 30, 2011.

On appeal appellant asserts that he mistakenly wrote the date of injury as December 29, 2011 on a medical form.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On December 30, 2011 appellant, then a 40-year-old mail handler equipment operator, filed a traumatic injury claim, alleging that he sprained his right shoulder at 11:45 a.m. that day, while pulling the handle on a wire cage. Jacob D. Jowers, supervisor of distribution operations, indicated with the check mark "yes," that the knowledge of the facts of the injury agreed with the statements of the employee and/or witnesses. However, "challenge" was written on the top of the claim form, and a note is appended to the claim form stating, "date of injury reported to agency differs from date the employee reported the [date of injury] to Solantic," a medical provider.[2] Mr. Jowers also signed a Form CA-16, authorization for medical treatment, on December 30, 2011 in which he indicated by check mark that necessary medical treatment could be furnished for the affects of the injury.

On a Solantic Baptist Urgent Care medical form, appellant indicated that "today's date" was December 29, 2011. He also indicated that the injury occurred at 11:45 a.m. on December 29, 2011. In a summary for employer form report dated December 30 2011, Dr. Amy R. Crowder, Board-certified in family medicine, a physician with Solantic, noted that appellant arrived at 3:25 p.m. The form indicated that the date of injury was December 29, 2011. Dr. Crowder diagnosed shoulder strain and advised that appellant could work modified duty with no lifting greater than 25 pounds continuously and no pushing, pulling or lifting greater than 30 pounds intermittently. A December 30, 2011 duty status report noted December 30, 2011 as the reported date of injury. On a Florida workers' compensation form report dated December 30, 2012, Dr. Crowder reported that December 29, 2011 was the date of injury and indicated by check marks that the injury was work related and that appellant could return to modified duty. She also completed an attending physician's report on December 30, 2011 in which she diagnosed shoulder sprain and indicated by check mark that the diagnosis was employment related. In a telefax transmittal dated January 3, 2012, "David" with Solantic advised "I can't change DOI, as patient declared DOI 12/29/11 on admission injury information."

By letter dated January 6, 2012, OWCP informed appellant of the type evidence needed to establish his claim. It noted the discrepancy regarding the date of injury and informed him that the discrepancy "must be resolved" for further consideration of the claim.

In a December 30, 2011 treatment note that listed the injury date as December 29, 2011, Dr. Crowder reported a history of present illness, stating that appellant reported that earlier on December 30, 2011 he felt a sharp pain in his right shoulder when he pulled a tow bar. She provided physical examination findings, diagnosed shoulder strain and advised that the condition was work related. In a January 13, 2012 treatment note, Dr. L.D. Atkinson, Board-certified in occupational medicine, a physician with Solantic, noted an injury date of December 30, 2011. He advised that appellant was seen in follow-up and had continued right shoulder pain. Dr. Atkinson diagnosed right shoulder strain and advised that appellant could perform restricted duty. He also provided a visit summary, a duty status report and a Florida workers' compensation form, all dated January 13, 2012, in which he indicated that the injury date was December 30, 2011 and that the diagnosed condition was work related.

[2] The written notations do not appear to be in Mr. Jowers' handwriting.

By decision dated February 10, 2012, OWCP denied the claim. It noted the discrepancy in the reported dates of injury and found that the evidence submitted was not sufficient to establish that the events occurred as described.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[3] including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.[4] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was 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 fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[7] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.[8]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is 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, must be one of reasonable medical certainty and must be supported by medical

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *T.H.*, 59 ECAB 388 (2008).

[7] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[8] *Betty J. Smith*, 54 ECAB 174 (2002).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

ANALYSIS

The Board finds that the evidence of record supports that an employment incident occurred on December 30, 2011. OWCP denied the claim on the grounds that there were inconsistencies regarding the date of injury because appellant stated on his claim form that the injury occurred at 11:45 a.m. on December 30, 2011, yet on a medical intake form at Solantic Urgent Care, he recorded a date of injury as December 29, 2011, and this date was memorialized on additional reports from Solantic. A closer inspection of the medical intake form, however, shows that appellant listed "today's date" as December 29, 2011 when clearly he was seen at Solantic on December 30, 2011. Dr. Crowder, who saw him at 3:25 p.m., reported that he injured his right shoulder earlier that day. Moreover, Mr. Jowers, supervisor of distribution operations, signed the claim form which had a date of injury of December 30, 2011. He indicated that the knowledge of the facts of the injury agreed with the statement of the employee. While someone appended "challenge" on the top of the claim form, and wrote that the date of injury reported to the employing establishment differed from that reported to Solantic, these appended notes were not signed and do not appear to be made by Mr. Jowers. The record does not contain a letter of challenge from the employing establishment. Mr. Jowers also completed a CA-16 form authorizing medical treatment, apparently filled out at the same time. He did not indicate doubt that the claimed condition was employment related on the CA-16 form. The Board thus finds that the factual evidence is sufficient to establish that appellant experienced an employment incident on December 30, 2011.[10]

The Board further finds that the case is not in posture for a decision with regard to whether the December 30, 2011 work incident caused an injury. As noted, part of an employee's burden of proof includes the submission of medical evidence addressing whether the employment incident caused a personal injury. Here, OWCP has not considered whether the medical evidence is sufficient to establish the claim and it has also not considered whether, regardless of the acceptance of the claim, appellant is entitled to reimbursement of medical expenses pursuant to the CA-16 form issued to him by the employing establishment.[11] Accordingly, the case will be remanded to OWCP for appropriate consideration and development of the medical evidence.[12] After such further development deemed necessary, OWCP shall issue an appropriate merit decision regarding appellant's claim.

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *See Betty J. Smith*, 54 ECAB 174 (2002).

[11] *Val D. Wynn*, 40 ECAB 666 (1989).

[12] *See N.W.*, Docket No. 11-530 (issued November 7, 2011).

CONCLUSION

The Board finds that the evidence supports that an employment incident occurred on December 30, 2011 and that the case must be remanded to OWCP to determine if appellant sustained an injury or medical condition caused by this incident.

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2012 decision of the Office of Workers' Compensation Programs be set aside and the case remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: August 15, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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