United States Department of Labor
Employees' Compensation Appeals Board

P.M., Appellant	)	
and	)	**Docket No. 12-276**
	)	**Issued: June 13, 2012**
U.S. POSTAL SERVICE, MAIN POST OFFICE, Minneapolis, MN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 18, 2011 appellant filed a timely appeal from a September 13, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on August 5, 2011.

FACTUAL HISTORY

On August 9, 2011 appellant, then a 46-year-old automation clerk, filed a Form CA-1 alleging that he injured his left elbow on August 5, 2011. He stated that he was "working too hard or do[ing] something over and over." Appellant did not stop work.

[1] 5 U.S.C. § 8101 *et seq.*

OWCP informed appellant in an August 12, 2011 letter that additional information was needed to establish his claim. It gave him 30 days to submit a factual statement detailing the August 5, 2011 employment incident and a medical report from a physician explaining how a diagnosed condition resulted from this purported event.

Appellant specified in an August 28, 2011 statement that he routinely used the delivery bar code sorter and loaded, swept and pulled mail on the job. He subsequently developed a swollen elbow that he originally attributed to a spider bite until a physician advised that the condition was due to overwork.[2]

In August 6, 2011 emergency department records, Dr. Kevin R. Chatwin, a Board-certified family practitioner, related that appellant was working the night shift when he sustained left elbow pain. On examination, he observed swelling, erythema and tenderness. X-rays showed prominent dorsal soft tissue swelling over the olecranon process. Dr. Chatwin diagnosed olecranon bursitis. An August 6, 2011 prescription note containing an illegible signature prohibited use of appellant's left arm for the period August 6 to 13, 2011.

An August 11, 2011 note from Dr. Paul C. Rondestvedt, a Board-certified family practitioner, indicated that appellant's olecranon bursitis "may be work related." An August 13, 2011 duty status report from a physician's assistant stated that the left elbow condition resulted from repetitive motions and advised that appellant could resume full-time duty.

By decision dated September 13, 2011, OWCP denied appellant's claim, finding the evidence insufficient to demonstrate that an employment incident occurred on August 5, 2011 as alleged.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,[3] including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.[4] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his 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

[2] Appellant's account that his injury developed over a period of time rather than during a single workday or shift was more consistent with a claim for occupational disease than one for traumatic injury. *See* 20 C.F.R. § 10.5(q) & (ee). Appellant has not filed an occupational disease claim.

[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).

submit sufficient evidence to establish that he 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 his subsequent course of action. An employee has not met his 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 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 appellant established that he used the delivery bar code sorter and loaded, swept and pulled mail at work on August 5, 2011 as asserted in his August 28, 2011 statement. As noted, an employee's statement alleging that an incident 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. In this case, appellant's factual statement was neither controverted by the employing establishment nor refuted by the case record. Moreover, he promptly received medical treatment and filed a traumatic injury claim on August 6 and 9, 2011, respectively. In view of the totality of the evidence, the Board finds that appellant experienced the August 5, 2011 employment incident occurred as alleged.

Nevertheless, the Board finds that appellant did not provide sufficient medical evidence to establish that his left elbow condition was due to the accepted employment incident. In August 6, 2011 emergency department records, Dr. Chatwin related that appellant was working the night shift when he sustained left elbow pain. Following x-rays and a physical examination,

[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).

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

he diagnosed olecranon bursitis following x-rays. However, Dr. Chatwin did not provide any medical rationale explaining how the August 5, 2011 employment incident pathophysiologically caused or contributed to the condition.[10] While Dr. Rondestvedt concluded in an August 11, 2011 note that appellant's olecranon bursitis "may be work related," his opinion is speculative and offered limited probative value on the issue of causal relationship because he did not provide fortifying medical rationale.[11]

The remaining evidence lacked evidentiary weight. A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician.[12] The August 6, 2011 prescription note cannot constitute competent medical evidence because one cannot determine whether the illegible signature belonged to a qualified physician.[13] Finally, since a physician's assistant is not a "physician" as defined under FECA, the August 13, 2011 duty status report lacked probative value.[14] In the absence of rationalized medical opinion evidence in support of causal relationship, appellant failed to meet his burden of proof.

Appellant may submit new evidence or argument as part of a formal 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 did not establish that he sustained a traumatic injury in the performance of duty on August 5, 2011.

[10] *See Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

[11] *George Randolph Taylor*, 6 ECAB 986, 988 (1954). The Board notes that neither Dr. Chatwin nor Dr. Rondestvedt identified the date of incident or the specific job activities that led to the claimed injury. *See John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition). *See also M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

[12] *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

[13] *R.M.*, 59 ECAB 690, 693 (2008). The Board also points out that the note did not address whether appellant's federal employment caused or contributed to his condition. *See J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[14] 5 U.S.C. § 8101(2); *Allen C. Hundley*, 53 ECAB 551, 554 (2002).

ORDER

IT IS HEREBY ORDERED THAT the September 13, 2011 decision of the Office of Workers' Compensation Programs be affirmed as modified.

Issued: June 13, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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