United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
and	)	**Docket No. 11-1082**
	)	**Issued: March 14, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 29, 2011 appellant filed a timely appeal from the February 9, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury 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 met his burden of proof to establish that he sustained an injury in the performance of duty on May 14, 2010.

FACTUAL HISTORY

On May 17, 2010 appellant, then a 57-year-old letter carrier, filed a traumatic injury claim alleging that on May 14, 2010 he lost control of his truck when he became dizzy and struck his head while in the performance of duty. He noted that the inside of the truck was over

[1] 5 U.S.C. § 8101 *et seq.*

100 degrees. The employing establishment controverted the claim contending that appellant provided conflicting statements with regard to the incident. It noted that he became sick while on the job and stopped work on May 14, 2010. Emergency room records dated May 14, 2010 noted that appellant was found in his truck with complaints of dizziness and nausea. Appellant stated that he did not know what happened but it could be the "cake he ate at work."

In a May 17, 2010 disability certificate, Dr. Alexander G. Karpenos, a Board-certified internist, placed appellant off work until May 26, 2010. OWCP also received a May 14, 2010 disability certificate from a nurse.

By letters dated May 28 and June 9, 2010, OWCP advised appellant that additional factual and medical evidence was needed. It requested a physician's opinion on causal relationships and allotted him 30 days within which to submit the requested information.

OWCP received an unsigned May 24, 2010 progress note from Dr. Andrea Reznik, a Board-certified neurologist, who diagnosed vertigo and headache. Dr. Reznik obtained a history of injury that appellant was driving his truck 10 days prior when he "had a sudden onset of vertigo." She noted that he experienced tinnitus, diplopia, nausea and vomiting which lasted one day with continued episodic vertigo lasting for a minute with the associated feeling of having a hangover with some headache and imbalance. An unsigned treatment note dated June 1, 2010 listed a diagnosis of vertigo. Dr. Reznik provided a disability certificate on May 25, 2010, in which she restricted appellant from driving until tests were complete.

A June 19, 2010 magnetic resonance imaging (MRI) scan of the brain read by Dr. Yaron Lebovitz, a Board-certified diagnostic radiologist, was normal.

By decision dated July 9, 2010, OWCP denied appellant's claim. It found that the May 14, 2010 incident occurred but appellant failed to submit sufficient medical evidence in support of his claim.

On August 6, 2010 appellant requested a telephonic hearing, which was held on October 20, 2010. At the hearing he reiterated that May 14, 2010 was a very hot day and his vehicle did not have air conditioning.

In an August 17, 2010 report, Dr. Reznik noted that appellant was under her care for an injury sustained while at work. Appellant "was inside his truck when it occurred around 10[:00] a.m. Since there was no air conditioning in the truck and the door of the truck must be closed at all times, he states that it was approximately 100 degrees inside the truck and this caused him to suddenly become ill and develop vertigo, nausea and vomiting." Dr. Reznik noted that he was taken to the emergency room for heat exhaust and opined that "this case should be considered a work[ers'] comp[ensation] case."

In a September 28, 2010 letter, appellant repeated his belief that his injury was work related and requested assistance with regard to garnering medical attention for his injuries.

In a report dated November 8, 2010, Dr. Sanjay Bhagia, Board-certified in emergency medicine noted that appellant was seen on May 14, 2010 by a physician who treated him for vertigo.

Emergency room records dated May 14, 2010 noted that appellant was found in his truck with complaints of dizziness and nausea. Appellant stated that he did not know what happened but it could be the "cake he ate at work."

By decision dated February 9, 2011, an OWCP hearing representative affirmed the July 9, 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 timely filed within the applicable time limitation period of FECA[2] and that an injury was sustained in the performance of duty.[3] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[5] The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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 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.[7]

[2] *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[5] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[6] *Id*. For a definition of the term "traumatic injury," *see* 20 C.F.R. § 10.5(ee).

[7] *Id.*

ANALYSIS

Appellant alleged that he developed vertigo, headaches, nausea and vomiting while performing his work duties as a letter carrier. OWCP found that the May 14, 2010 vertigo incident happened when appellant was working in his vehicle and became dizzy and struck his head.

The Board finds that the medical evidence is insufficient to establish that the employment incident caused an injury. The medical reports of record do not adequately attribute appellant's vertigo and headaches to his employment. The medical evidence contains no reasoned explanation of how the employment incident of May 14, 2010 caused or aggravated his vertigo.[8]

The May 24, 2010 report from Dr. Reznik diagnosed vertigo and headache. She obtained a history of injury that appellant was driving his truck 10 days prior when he had a sudden onset of vertigo. Dr. Reznik noted that he reported tinnitus, diplopia, nausea and vomiting which lasted one day with continued episodic vertigo lasting for a minute with the associated feeling of a hangover, headache and imbalance. However, she did not provide a firm medical diagnosis or a reasoned opinion on causal relationship. OWCP procedures recognize that, with certain "clear-cut" traumatic injuries, such as a fall from a ladder resulting in a broken leg, the record may require only an affirmative statement by a physician to establish causal relationship. This is not such a situation. In the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship, appellant did not meet his burden of proof.[9] In an August 17, 2010 report, Dr. Reznik explained that he was inside his truck around 10:00 a.m. As there was no air-conditioning and the door of the truck was closed, appellant estimated that it was approximately 100 degrees inside the truck. He became ill and developed vertigo, nausea and vomiting. Appellant was taken to the emergency room for heat exhaustion. As to causal relationship, Dr. Reznik stated, "this case should be considered a work[ers'] comp[ensation] case." While she related the history obtained from appellant, she did not provide a firm diagnosis or explain why the case should be considered under workers' compensation. The medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, but neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.[10]

The emergency room records dated May 14, 2010, which are unidentified, attributed appellant's condition to "eating cake." There is no indication who authored this record and it appears to be a recitation of a history provided by appellant. This report does not constitute

[8] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[9] *Deborah L. Beatty*, 54 ECAB 340 (2003), citing Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(2) (June 1995).

[10] *Thomas A. Faber*, 50 ECAB 566 (1999); *Samuel Senkow*, 50 ECAB 370 (1999).

probative medical opinion as there is no indication that the person completing the report was a "physician" as defined in 5 U.S.C. § 8102(2). The Board has found that reports lacking proper identification, such as unsigned treatment notes, do not constitute probative medical evidence.[11]

Similarly, health care providers, such as nurses, are not physicians as defined under FECA. Thus, their opinion on causal relationship does not have probative value.[12]

The May 17, 2010 disability certificate from Dr. Karpenos, the June 19, 2010 report from Dr. Lebovitz and the November 8, 2010 report from Dr. Bhagia merely placed appellant off work and provided findings. They did not provide a firm diagnosis or offer any opinion on causal relationship. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[13]

The medical reports submitted by appellant do not sufficiently address how the May 14, 2010 incident at work caused or aggravated his vertigo and are reports of limited probative value.[14] The evidence is insufficient to establish that the May 14, 2010 employment incident caused or aggravated a specific injury.[15]

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty on May 14, 2010.

[11] *R.M.*, 59 ECAB 690 (2008).

[12] *See Jane A. White*, 34 ECAB 515, 518 (1983).

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

[14] *See Linda I. Sprague*, 48 ECAB 386, 389-90 (1997).

[15] Appellant may submit evidence or argument with a written request for reconsideration 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.

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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