United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 11-1544**
	)	**Issued: March 12, 2012**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Birmingham, AL, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 17, 2011 appellant filed a timely appeal from an April 11, 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 February 4, 2011.

FACTUAL HISTORY

On February 17, 2011 appellant, then a 62-year-old mail handler, filed a traumatic injury claim alleging that he strained the lower lumbar area when the truck he was loading on

[1] 5 U.S.C. § 8101 *et seq.*

February 4, 2011 was bumped by a tractor trailer. He listed the time of injury as 2054 (8:54 p.m.). Appellant's supervisor, on February 24, 2011, controverted the claim and asserted that appellant was off the clock when the claimed injury occurred.[2] Appellant stopped work on February 5, 2011.[3]

In an authorization for medical treatment Form CA-16, appellant stated that, on February 4, 2011, he was about to load an outgoing truck and, while securing the truck for dispatch, a trailer truck disengaged into the truck in which he was working. His supervisor signed the form on February 4, 2011.

Emergency department records dated February 5, 2011 and signed by Dr. Aaron L. Dupree, an emergency physician, noted a work-related back injury. In a February 5, 2011 report, Dr. Derek A. Robinett, a Board-certified emergency physician, specified that appellant was operating a forklift when a motor vehicle crashed into him. He observed lower back tenderness on examination while a prior x-ray did not show any fractures. Dr. Robinett diagnosed back strain.

A February 15, 2011 attending physician's report contained a checkbox marked "yes" indicating that appellant's lumbar strain was causally related to a vehicle collision at the worksite.[4]

OWCP informed appellant in a March 7, 2011 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a factual statement detailing the February 4, 2011 employment incident and a medical report from a physician explaining how this event caused or contributed to a lower back condition.

Appellant submitted additional medical evidence. February 15 and March 2, 2011 reports from a physician related that he was inside a truck on February 4, 2011 when a collision with a tractor trailer knocked him down. An examination revealed midline lumbar tenderness to palpation.[5]

By decision dated April 11, 2011, OWCP denied appellant's claim, finding the evidence insufficient to demonstrate that the February 4, 2011 incident occurred as alleged.

[2] The employing establishment noted that appellant's regular work hours were from 1650 to 0100 (4:50 p.m. to 1:00 a.m.). The employing establishment submitted a "processed clock ring" from February 4 to 5, 2011.

[3] The case record contains work status notes from February 15 to March 21, 2011. The employing establishment subsequently offered a modified assignment, which appellant accepted.

[4] The physician's signature was illegible.

[5] These documents, along with a hospital discharge instruction form dated February 4, 2011, contained an illegible physician's signature.

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,[6] including that he is an "employee" within the meaning of FECA and that he filed his claim within the applicable time limitation.[7] 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.[8]

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 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.[9]

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.[10] 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.[11]

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.[12]

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

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

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

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

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

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

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

ANALYSIS

The Board finds that appellant provided sufficient evidence to establish that the February 4, 2011 employment incident occurred as alleged. As noted above, 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. Appellant's assertion that he was loading a truck when a tractor trailer bumped into his trailer on February 4, 2011 was not disputed except for the February 24, 2011 statement by his supervisor advising that appellant was off the clock. However, the employer did not submit any supporting evidence clearly supporting that appellant was not working at the time of the claimed injury. Instead, appellant's supervisor signed an authorization for medical treatment on February 4, 2011, which contained appellant's description of the claimed injury and did not indicate any dispute regarding whether the February 4, 2011 incident occurred as alleged. Furthermore, appellant's factual account of the incident is generally consistent with the health history noted in medical documents of record.[13] Consequently, the Board finds that the February 4, 2011 incident occurred as alleged.

Although appellant has established that, the claimed incident occurred as alleged, the Board still finds that he failed to establish his traumatic injury claim because the medical evidence did not sufficiently establish that this work event caused or contributed to his lower back condition.

Dr. Robinett presented an accurate history of the February 4, 2011 employment incident and diagnosed back strain in his February 5, 2011 report. Nonetheless, he failed to provide adequate medical rationale explaining how the event pathophysiologically caused appellant's injury.[14] Likewise, February 5, 2011 emergency department records from Dr. Dupree were of limited probative value on the issue of causal relationship because they lacked fortifying medical rationale.[15]

The remaining evidence, namely the February 15 and March 2, 2011 reports containing illegible physician's signature, lacked evidentiary weight. A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician.[16] Because it cannot be determined whether the person who signed these reports is a physician as defined in 5 U.S.C. § 8101(2), they cannot constitute competent medical evidence.[17]

[13] *See Caroline Thomas*, 51 ECAB 451 (2000) (a consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can be evidence of the occurrence of the incident).

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

[15] *George Randolph Taylor*, 6 ECAB 986, 988 (1954). Moreover, Dr. Dupree did not address the details of the February 4, 2011 incident. *See John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician must discuss whether the employment incident described by the claimant caused or contributed to the diagnosed medical condition).

[16] *See Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

[17] *R.M.*, 59 ECAB 690, 693 (2008).

Although OWCP denied appellant's claim of injury, it did not adjudicate the issue of whether he should be reimbursed for incurred medical expenses. The employing establishment authorized treatment for him with a CA-16 form on the date of the claimed injury. A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[18] OWCP did not address this issue in its decision.

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 the claimed work incident occurred as alleged but that appellant did not submit sufficient medical evidence to establish that the February 4, 2011 work incident caused an injury. The Board further finds that OWCP should adjudicate the issue of whether he should be reimbursed for incurred medical expenses.

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2011 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: March 12, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[18] *See Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989).