United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 12-956**
	)	**Issued: November 6, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 26, 2012 appellant filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) decision dated January 5, 2012, which found that appellant did not sustain an injury in the performance of duty. 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 a traumatic injury in the performance of duty on September 1, 2011.

FACTUAL HISTORY

On September 1, 2011 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim alleging that he fell in a hole on that date and injured his right leg and the back of his head. He stopped work on September 1, 2011 and returned on September 6, 2011. The employing

[1] 5 U.S.C. § 8101 *et seq.*

establishment noted that appellant "omitted" that he exited his vehicle "backwards." It stated that he could not see where he was going while stepping out.

By letter dated November 30, 2011, OWCP advised appellant that additional factual and medical evidence was needed. It explained that the evidence was not sufficient to establish that he sustained an injury while performing his work duties. OWCP noted that a physician's opinion was crucial to appellant's claim and allotted 30 days to submit the requested information.

OWCP received treatment notes dated September 1 to 16, 2011 from Dr. David Yorio, an osteopath, who diagnosed a sprain/strain, contusion to the right leg, head and right ribs. In listing the history of injury, Dr. Yorio noted that appellant had pain in the affected areas after he fell into a ditch when he exited his mail truck. Portions of the notes are illegible.

By decision dated January 5, 2012, OWCP denied appellant's claim finding that the evidence did not establish that the incident occurred at the time, place and in the manner alleged. It noted that the employing establishment advised that he omitted the fact that he was coming out of his vehicle backwards and could not see where he was stepping. OWCP further found that there was no medical evidence that provided a diagnosis which could be connected to the events.

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]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.[5] Such circumstances 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 cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.[6] However, an employee's statement alleging 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]

[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] *Early David Seal,* 49 ECAB 152 (1997); *see Mary J. Coppolino,* 43 ECAB 988 (1992).

[6] *Merton J. Sills,* 39 ECAB 572, 575 (1988).

[7] *Thelma S. Buffington*, 34 ECAB 104 (1982).

When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must establish that such event, incident or exposure caused an injury.[8] Once an employee establishes that he sustained an injury in the performance of duty, he has the burden of proof to establish that any subsequent medical condition or disability for work, for which he claims compensation, is causally related to the accepted injury.[9]

ANALYSIS

Appellant alleged that, on September 1, 2011, he fell into a hole on his route and sustained an injury to his right leg and the back of his head in the performance of duty. OWCP found that the September 1, 2011 incident did not happen at the time, place and in the manner alleged because the employing establishment indicated that he omitted the fact that he was coming out of his vehicle backwards and could not see where he was stepping. The fact that appellant may have exited his vehicle backwards does not mean that the incident did not occur. The Board notes that there is no evidence in the record to refute that he fell in a hole while exiting his work vehicle as part of his duties. Appellant also promptly reported the incident. There are no contradictory statements or evidence which refutes that the fall occurred on September 1, 2011. The Board finds that the evidence of record is sufficient to establish the September 1, 2011 incident occurred as alleged.

The medical evidence, however, is insufficient to establish the second component of fact of injury, that the employment incident caused an injury. The medical evidence does not establish that appellant exiting his vehicle and stepping into a hole on September 1, 2011 caused injury. The record contains insufficient medical opinion explaining how the fall on September 1, 2011 caused or aggravated a diagnosed medical condition. Appellant provided treatment notes from Dr. Yorio; but the physician did not provide a specific opinion addressing whether any diagnosed condition was caused or aggravated by the incident of September 1, 2011. He diagnosed a sprain/strain, contusion to the right leg, head and right ribs, but did not specifically address causal relationship or address how the September 1, 2011 incident caused or aggravated these conditions. Dr. Yorio's September 1, 2011 treatment note gives a brief history of appellant falling into a ditch as he exited his vehicle. He did not provide a narrative opinion on the issue of causal relation. To the extent that this statement of history may be viewed as supporting causal relationship, Dr. Yorio did not provide adequate rationale explaining his conclusion.[10] These reports are of limited probative value and are insufficient to establish appellant's claim.

On appeal, appellant described how he sustained his injury and questioned why his claim was denied. The Board finds that the first component of fact of injury, the incident was

[8] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

[9] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

established. The medical evidence is insufficient to establish his injury as Dr. Yorio did not sufficiently address causal relation.

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 not met his burden of proof in establishing that he sustained an injury in the performance of duty on September 1, 2011.

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2012 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: November 6, 2012
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Member, concurring:

The employer in this case controverted the claim imputing negligence to appellant in how he performed his duties. It was noted that he exited from his vehicle backwards and could not see where he was going. But negligence on appellant's part is immaterial to coverage under FECA unless it constitutes a form of deviation from the course of his employment or it is of a kind specifically made a statutory defense under FECA.[11] As noted by Professor Larson, the basic test of coverage under workers' compensation is the relation of the injury to the employment with no reference to the personal merits of the parties.[12]

[11] A. Larson, *Workers' Compensation Law*, § 32.01 (2000).

[12] *Id*.

In *Rudolph Faires*,[13] the employee sustained injury when he accidentally drew his fingers into a chain saw while performing his duties. His claim was denied by the Bureau of Employees' Compensation, predecessor of OWCP, for the reason that the injury did not arise in the performance of duty as he had previously been warned concerning the use of power equipment. The Board set aside the denial and remanded the case for further development. The Bureau had not contended that the injury arose through misconduct on the part of the employee. The Board noted:

> "…The workmen's compensation laws impose liability upon industry to take care of its casualties without regard to fault or lack of fault of the employer, and similarly give rise to a claim for compensation on the part of the injured employee without regard to the employee's fault, unless the injury was caused by conduct of the employee amounting to the statutory bar of 'willful misconduct.'"[14]

The Board further noted that disobedience of orders does not necessarily place an employee outside the scope of employment, particularly in situations where the forbidden act furthers the performance of the assigned duties and redounds to the employer's benefit.[15]

In this case, appellant was performing the duties of his job as a letter carrier while on his postal route, during his work shift and engaged in activities incidental to his employment. The incident in question arose while he was in the course of his federal employment. The fact that appellant may have been negligent at the time he stepped down from his postal vehicle would not preclude coverage of his injury under FECA or take him from the performance of duty.

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

[13] 4 ECAB 649 (1952).

[14] *Id*. at 650.

[15] *Id.* The Board noted that the employer is not entitled under the liberal terms of workers' compensation law to invoke in avoidance of liability any doctrine of added risk or contributory fault, as at common law.