

**United States Department of Labor
Employees' Compensation Appeals Board**

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R.M., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Waycross, GA, Employer)

Docket No. 11-1826
Issued: September 5, 2012

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 2, 2011 appellant, through his attorney, filed a timely appeal of a June 28, 2011 Office of Workers' Compensation Programs' (OWCP) merit decision denying that he was injured in the performance of duty. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he was injured in the performance of duty on February 7, 2010.

FACTUAL HISTORY

On February 12, 2010 appellant, then a 38-year-old sales and systems distributor, filed a traumatic injury claim alleging that on February 7, 2010 he "passed out and hit head on

¹ 5 U.S.C. § 8101 *et seq.*

equipment.” The claim form indicated that appellant’s incident occurred during his regular tour of duty at his duty station. On the reverse of the form, appellant’s supervisor stated that the medical documentation did not support a work-related injury as appellant had two other claims for the same type of incident. Appellant submitted a report dated February 9, 2010 from Dr. Michael Baker, a Board-certified neurologist, indicating that he passed out due to syncope or dehydration.

In a letter dated February 24, 2010, OWCP requested additional factual and medical information from appellant including what he believed to be the cause of his fall, whether he struck an object during his fall and whether there were any witnesses to his fall.

Appellant responded and stated that he did not have a clear recollection of the duties that he was performing at the time of his blackout. He stated that he was spreading mail. Appellant noted, “Everyone at work says I get in a confused state minutes before I pass out and start staring at things and acting like I’m lost or something.” He further stated that he never remembered what happened right before or after he blacked out. Appellant stated that this was the third time in a year that he passed out. He stated that his doctors attributed his faints to standing on his feet for long periods at work and becoming overheated. Appellant noted that he had borderline high blood pressure and had been taking medication for this condition for three years. He stated that the “rumor” was that he hit a pull down rack during his faint, but that there was only one witness and he requested that OWCP obtain a statement from his employing establishment.

Appellant submitted a computerized tomography (CT) scan dated February 8, 2010 due to headaches which was read as no acute intracranial abnormalities.

By decision dated April 2, 2010, OWCP denied appellant’s claim. It found that appellant had not submitted medical evidence establishing a causal relationship between his employment and his alleged injury.

In a report dated March 24, 2010, Dr. Harsh Singh, a Board-certified neurologist, noted that appellant had passed out three times in the last year. He noted that appellant had a history of headaches. Dr. Singh provided his findings on physical examination and stated, “At this point, his events are unclear and they do not appear to be epileptic in nature.”

Appellant requested a review of the written record by an OWCP hearing representative on April 27, 2010. He submitted additional medical evidence including a note dated April 28, 2010 from Dr. Jonathan Constantin, an osteopath, indicating that appellant had another episode of vasovagal syncope at work and referring to his October 28, 2009 report. In a report dated October 28, 2009, Dr. Constantin stated that appellant experienced “fairly classical vasovagal syncope which was likely related to prolonged standing.” He recommended that appellant avoid prolonged standing.

On February 8, 2010 Chris Dryden, a coworker, stated that appellant collapsed on the floor on that date. Brandon Gamadge reported appellant’s fall. Mr. Dryden then drove appellant home. He noted that appellant had a large lump on the back of his head.

The employing establishment controverted appellant's claim on June 22, 2010 alleging that appellant had an underlying condition which was not job related and which resulted in his fall at work.

By decision dated August 5, 2010, OWCP's hearing representative denied appellant's claim finding that the medical evidence did not establish a causal relationship between a specific injury and the employment. The hearing representative explained that the medical evidence did not clearly establish a causal relationship between appellant's employment duty of standing and his vascular syncope.

Dr. Gerard M. Gerling, a Board-certified neurologist, examined appellant on September 13, 2010 diagnosing carpal tunnel syndrome and migraine headaches. He noted that appellant had lost consciousness four times in the past year as diagnosed as vasovagal syncope. Dr. Gerling found that appellant had a normal neurological examination and reviewed the medical evidence. He noted that appellant's treating physician diagnosed vasovagal syncope related to overheating and standing for too long at work. Dr. Gerling disagreed with this assessment. He stated, "There is insufficient evidence provided to indicate what his condition is, but there is no evidence provided that indicates that he suffered a work-related injury." Dr. Gerling noted that vasovagal syncope was medically considered as a functional disorder rather than an organic illness.

By decision dated October 18, 2010, OWCP denied appellant's claim finding that the evidence was not sufficient to establish that he sustained a traumatic injury in the performance of duty on February 7, 2010. It stated that the medical evidence was not sufficient to establish that a medical condition was diagnosed in connection with the claimed event. This decision included full appeal rights.

Appellant informed OWCP on October 27, 2010 that his teeth were dislodged during the fall. Appellant, through his attorney, requested an oral hearing on October 29, 2010. He testified at the oral hearing on March 21, 2011 alleging that he was working outside in 100 degree weather and as he was leaving work walked by a concrete picnic table and fainted. Appellant alleged that he hit a concrete door and that his supervisors found him lying in a pool of blood with his teeth knocked out.²

In a report dated August 11, 2010, Dr. Constantin stated that appellant sustained a traumatic syncopal event while working outside in 104 degree weather. He noted that appellant had a syncopal episode in which he lost several teeth and struck his head which he was hospitalized and released. Dr. Constantin stated, "This is a 38-year-old with fairly classic vasovagal syncope and it seems to be clearly exacerbated by prolonged standing at work. His last episode was his most dramatic and traumatic and occurred in 104 degrees temperature with profuse sweating."

By decision dated June 28, 2011, the hearing representative reviewed the medical evidence and noted that variances between appellant's description of the employment events. He

² In the event that appellant is alleging a separate employment incident in August 2010 which resulted in a fall, he should file a separate notice of traumatic injury regarding that claim.

concluded that appellant had blacked out and fell at work on February 7, 2010, but that the medical evidence was not sufficient to establish that appellant's work affected an underlying medical condition on February 7, 2010.

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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury."³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁴

Congress, in providing for a compensation program for federal employees, did not contemplate an insurance program against any and every injury, illness, or mishap that might befall an employee contemporaneous or coincidental with her employment; liability does not attach merely upon the existence of any employee/employer relation.⁵ FECA provides for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty. The term "in the performance of duty" has been interpreted to be the equivalent of the commonly found prerequisite in workers' compensation law, "arising out of and in the course of employment."⁶ "In the course of employment" deals with the work setting, the locale, and time of injury.⁷ In addressing this issue, the Board has stated:

"In the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be said to be engaged in his master's business; (2) at a place where he may reasonably be expected to be in connection with the employment; and (3) while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto."⁸

This alone is not sufficient to establish entitlement to benefits for compensability. The concomitant requirement of an injury "arising out of the employment" must be shown, and this encompasses not only the work setting but also a causal concept, the requirement being that the employment caused the injury in order for an injury to be considered as arising out of the

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁵ *Minnie N. Heubner (Robert A. Heubner)*, 2 ECAB 20, 24 (1948); *Christine Lawrence*, 36 ECAB 422, 423-24 (1985).

⁶ *James E. Chadden, Sr.*, 40 ECAB 312, 314 (1988).

⁷ *Denis F. Rafferty*, 16 ECAB 413, 414 (1965).

⁸ *Carmen B. Gutierrez*, 7 ECAB 58, 59 (1954).

employment, the facts of the case must show some substantial employer benefit is derived or an employment requirement gave rise to the injury.⁹

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.¹⁰ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.¹¹

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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹²

ANALYSIS

Appellant, a federal employee, has alleged that he was injured at his regular work station during his tour of duty or during his employment at the time and place his duties required. He has established that his injury occurred in the course of employment, but must also show that his injury arose out of his employment, that his employment caused the injury.

If appellant's injury was due to an idiopathic condition, the injury would not arise out of his employment. OWCP has the burden of proof to submit medical evidence showing the existence of a personal, nonoccupational pathology if it chooses to make a finding that a given fall is idiopathic in nature. The fact that the cause of a particular fall cannot be determined does not establish that it was due to an idiopathic condition and if the record does not establish a particular fall was due to an idiopathic condition, it must be considered as merely an unexplained

⁹ See *Eugene G. Chin*, 39 ECAB 598, 602 (1988).

¹⁰ *Elaine Pendleton*, *supra* note 3.

¹¹ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

¹² *James Mack*, 43 ECAB 321 (1991).

fall, which is covered under FECA.¹³ The Board finds that there is no rationalized medical evidence in the record that appellant's fall on February 7, 2010 was due to an idiopathic condition.

Appellant has submitted a variety of medical reports addressing the cause of the fall, however, due to the conflicting nature of the medical reports from Drs. Constantin, Singh and Gerling, the Board is unable to determine the cause of appellant's fall. Dr. Constantin attributed appellant's fall to classical vasovagal syncope which was likely related to prolonged standing. Dr. Singh stated that the cause of appellant's blackout was unclear and did not appear to be epileptic in nature. Dr. Gerling found that there was insufficient evidence provided to diagnose appellant's condition, but did not believe that it was related to standing in the performance of duty.

As an unexplained fall while appellant was engaged in activities incidental to his employment duties, an injury resulting from this fall is compensable. The Board finds that OWCP has properly accepted that appellant had an unexplained fall on February 7, 2010. The Board further finds that OWCP properly concluded that appellant did not establish any medical condition for which compensation is claimed as a result of the February 7, 2010 employment incident.

Appellant alleged that he hit his head during the February 7, 2010 fall. Mr. Dryden stated that appellant had a large lump on the back of his head after the February 7, 2010 fall. Both the Board and OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection. In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.¹⁴ On February 8, 2010 Dr. Baker provided the initial medical examination following the February 7, 2010 fall, but did not diagnose any head condition resulting from the fall. He listed his diagnoses as passed out, syncope and dehydration only. Appellant also underwent a CT scan on February 9, 2010 due to a headache. The CT scan was found to be normal. The Board notes that Drs. Gerling and Singh indicated that appellant had a history of headaches or migraines. Due to this aspect of appellant's medical history and the lack of affirmed medical evidence diagnosing any head condition as a result of the February 7, 2010 fall, the Board is unable to establish a causal relationship between the accepted employment incident on February 7, 2010 and his headache on February 8, 2010.¹⁵ The medical evidence is not therefore sufficient to establish a causal relationship between appellant's unexplained fall and a diagnosed medical condition.

¹³ *M.M.*, Docket No. 08-1510 (issued November 25, 2008); *Jennifer Atkerson*, 55 ECAB 317 (2004).

¹⁴ *G.G.*, 58 ECAB 389 (2007).

¹⁵ See *Atkerson*, *supra* note 13, (the Board found that a skull fracture demonstrated by x-ray following an unexplained fall was not a clear cut traumatic injury claim that could be accepted on the basis of the physician's opinion as there was medical evidence of previous head traumas and no evidence whether the accepted fall was sufficient to cause the skull fracture).

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 failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on February 7, 2010.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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