United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 13-1226**
	)	**Issued: August 22, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Islandia, NY, 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 April 24, 2013 appellant filed a timely appeal of an April 12, 2013 Office of Workers' Compensation Programs' (OWCP) merit decision 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 the case.

ISSUE

The issue is whether appellant sustained a traumatic injury on February 11, 2013 in the performance of duty.

FACTUAL HISTORY

On February 11, 2013 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim alleging that on that date he slipped on ice while walking in the performance of duty and injured his right knee and ankle. On a Form CA-1 Paul Ingraffia, a supervisor, indicated that the

[1] 5 U.S.C. § 8101 *et seq.*

injury was caused by the employee as he "did n[o]t observe his surroundings." Later in a letter dated February 11, 2013, James P. Burke, appellant's supervisor, controverted the claim noting that appellant's pants and jacket were dry on February 11, 2013 when he reported to the employing establishment following the alleged fall. He stated that appellant had no signs of falling into snow, ice or water and that his gait appeared normal. Mr. Burke noted that appellant had expressed his distaste for delivering in the snow the morning of his alleged incident.

Appellant sought treatment at a hospital emergency room on February 11, 2013. The nursing notes indicate that he reported falling from a standing position with knee and ankle pain. Dr. Paul Dicpingaitis, an orthopedic surgeon, examined appellant on February 12, 2013 and diagnosed recurrent right ankle sprain and a right knee lateral contusion. He recommended that appellant returned to work on February 18, 2013. Dr. Dicpingaitis completed a duty status report on February 19, 2013 and stated that appellant slipped and twisted his ankle on February 11, 2013. He diagnosed right ankle sprain and right knee lateral contusion.

In a letter dated March 12, 2013, OWCP requested that appellant provide additional factual and medical evidence in support of his claim.

By decision dated April 12, 2013, OWCP denied appellant's claim finding that he failed to submit sufficient factual evidence to establish that the employment incident occurred as alleged. It noted that he had not responded to the request for additional factual information.

LEGAL PRECEDENT

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."[2] 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.[3] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

With respect to the first component of fact of injury, the employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an 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 or her subsequent course of action. An employee has not met his or her burden of proof of 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. Such

[2] 20 C.F.R. § 10.5(ee).

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

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, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. 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.[4]

The second requirement to establish a traumatic injury claim is that the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.[5] A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[6] Medical rationale includes a physician's reasoned opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.[7]

ANALYSIS

Appellant alleged on February 11, 2013 that he slipped on ice while delivering mail in the performance of duty. He sought medical treatment that day at a local hospital emergency room where he reported falling from a standing position at work with right knee and ankle pain. Appellant's statements are consistent with the surrounding facts and circumstances and his subsequent course of action. He provided prompt notification of injury, sought medical treatment on February 11, 2013, provided a consistent history of injury to his physician and took time off work. While appellant's supervisors noted that his pants and jacket were not wet and that he did not immediately call to report his injury, these observations are not sufficient to overcome the probative value given appellant's statement that his injury occurred on February 11, 2013 when he slipped on ice while delivering his route. The Board finds that there is no strong or persuasive evidence that the employment incident did not occur as alleged.

Appellant submitted limited medical evidence in support of his claim. Dr. Dicpingaitis examined appellant on February 12 and 19, 2013 and diagnosed recurrent right ankle sprain and a right knee lateral contusion. He did not describe the employment incident in detail or offer any explanation of the mechanics of his fall and resulting injury. Without a detailed medical report describing the employment incident in detail and noting how and why appellant sustained a recurrent right ankle sprain and knee contusion as a result of this incident, Dr. Dicpingaitis' reports are not sufficient to meet appellant's burden of proof.

[4] *D.B.*, 58 ECAB 464, 466-67 (2007).

[5] *J.Z.*, 58 ECAB 529 (2007).

[6] *T.F.*, 58 ECAB 128 (2006).

[7] *A.D.*, 58 ECAB 149 (2006).

Appellant also submitted his emergency room records which were signed by a nurse. Nurses are not physicians under FECA and are not competent to render a medical opinion.[8]

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish a causal relationship between his accepted employment incident on February 11, 2013 and his diagnosed conditions.

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 established that the employment incident occurred as alleged. However, the Board further finds that he has not submitted sufficient medical opinion evidence to establish that the February 11, 2013 employment incident resulted in a traumatic injury.

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: August 22, 2013
Washington, DC

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

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

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

[8] *G.G.*, 58 ECAB 389 (2007).