United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 13-1481**
	)	**Issued: December 3, 2013**
DEPARTMENT OF THE ARMY, RED RIVER ARMY DEPOT, Texarkana, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 10, 2013 appellant filed a timely appeal of the May 3, 2013 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.[2]

ISSUE

The issues is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty.

[1] 5 U.S.C. §§ 8101-8193.

[2] On appeal, appellant submitted new evidence. The Board's may not consider new evidence on appeal as its review is limited to the evidence that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On February 5, 2013 appellant, then a 48-year-old welder, filed a traumatic injury claim alleging that on December 31, 2012, he slipped and fell and injured his back in Afghanistan. He did not stop work. In a supervisor's report, Jason Cross, a supervisor, noted that appellant was in the performance of duty when injured and noted that his knowledge of the facts about the injury was consistent with the statements of appellant.

The employing establishment submitted a February 6, 2013 letter of controversion noting that there were no witnesses to the incident and indicated that appellant was a weight lifter, frequented a gym and had a history of another back injury in 1988 caused by lifting weights. It further noted that appellant waited almost two weeks before seeking medical treatment and did not report the fall to his supervisor until January 19, 2013.

In support of his claim, appellant submitted a February 27, 2013 statement noting that on December 31, 2012 he was walking to an office and slipped and fell on ice. He noted that he could not get up and security workers assisted him. Appellant submitted a photograph of the ice where he fell. He submitted a sick slip dated January 15, 2013, signed by a provider with an illegible signature, who reported appellant injured his back on December 31, 2012 when he fell on ice in "Bagram" and his condition was worsening.

Medical evidence was also submitted with the claim. On January 19, 2013 appellant was treated by Dr. N.P. Chhieng, a Board-certified emergency physician, for worsening back pain. He reported falling on ice in Bagram, Afghanistan, on December 31, 2012 and experiencing right low back pain radiating into the toes. Dr. Chhieng noted that appellant had back surgery in 1988 which was caused by a weight lifting injury. He diagnosed mechanical back pain with sciatica, progressive pain from a fall in December and prescribed oral analgesics. Dr. Chhieng noted that appellant's current work condition was not conducive to his injury and recommended he return stateside for physical therapy and reevaluation.

On February 21, 2013 appellant was treated by a nurse practitioner for left shoulder and low back pain starting on December 31, 2012. He reported a work-related injury two months prior when he slipped on ice and landed on his shoulder and back. Appellant noted symptoms of bloody stools and urine and loss of bowel and bladder control for a few days after the accident with current symptoms of numbness, swelling, tingling and weakness. The nurse practitioner noted findings and stated that lumbar spine x-rays revealed hardware with no acute sign of injury and diagnosed lumbago. In a February 21, 2013 duty status report, the nurse practitioner diagnosed lumbago and noted that appellant could work with restrictions. In a March 5, 2013 report, the nurse practitioner noted a similar history while a March 5, 2013 duty status report indicated that appellant had returned to work with restrictions.

By letter dated March 26, 2013, OWCP advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that his claim was administratively handled to allow medical payments up to $1,500.00; however, the merits of the claim had not been formally adjudicated. OWCP advised that, because a request for a magnetic resonance imaging (MRI) scan was received and appellant's expenses exceeded $1,500.00, his claim would be formally adjudicated. It requested

that he submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents contributed to his claimed lumbar condition. OWCP noted that medical evidence must be submitted by a qualified physician and that nurse practitioners are not considered physicians under FECA. It requested that appellant submit witness statements to the incident, address why his claim was not filed until February 5, 2013 and why he delayed seeking medical treatment and did not promptly report his injury to his supervisor.

Appellant submitted an April 1, 2013 witness statement from Willie J. Alexander, a supervisor, who noted that on December 31, 2012, appellant reported that he slipped and fell on ice and injured his back when he was walking down a hill in the snow behind a shop. Mr. Alexander advised that he had one of his employees take appellant to the main hospital to have him examined. Appellant reported that his back was swollen and he was prescribed pain medicines. Mr. Alexander recommended appellant report his injury to his supervisor and prepare an accident report before flying out of Kandahar the next day. He noted speaking with appellant on January 3 or 5, 2013 and appellant noted that he was treated in the medical center in Kandahar and the physician returned him to the states for medical attention on January 10 or 13, 2013. Also submitted was a statement from Michael Chamblee, a coworker, who witnessed appellant's accident in Bagram, Afghanistan. Mr. Chamblee reported that on December 31, 2012 he and appellant were going to get documents signed and appellant slipped and fell on the ice. He indicated that he and guards assisted appellant to his feet and appellant complained that his back, right leg and left shoulder were burning.

Appellant was further treated by a nurse practitioner from March 19 to April 2, 2013, for left shoulder and lower back pain which began on December 31, 2012. He reported slipping on ice at work two months prior and landed wrong causing pain in his back and shoulder. Appellant again noted symptoms of bloody stools and urine and loss of bowel and bladder control for a few days after the accident with current symptoms of numbness, swelling, tingling and weakness. The nurse practitioner reiterated previous findings, stated that lumbar spine x-rays revealed hardware with no acute sign of injury and diagnosed lumbago. In an April 2, 2013 report, the nurse practitioner noted that the MRI scan of the lumbar spine did not show anything specific except for prior surgical changes. In a duty status report dated March 19 to April 2, 2013, the nurse practitioner diagnosed lumbar strain and shoulder strain and returned appellant to work with restrictions.

In a decision dated May 3, 2013, OWCP denied appellant's claim on the grounds that the evidence was not sufficient to establish that the events occurred as alleged as required by FECA.[3]

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

[3] *Supra* note 1.

disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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 medical evidence to establish that the employment incident caused a personal injury.[5]

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.[6] 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.[7]

Rationalized medical opinion evidence is generally required to establish causal relationship. 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.[8]

ANALYSIS

OWCP denied appellant's claim on the grounds that he failed to establish that the events occurred as alleged. The evidence submitted does support that on December 31, 2012 appellant was on his way to an office when he slipped and fell on ice while in the performance of duty. Specifically, appellant submitted a statement from Michael Chamblee, a coworker, who witnessed appellant's accident in Bagram, Afghanistan, noting that on December 31, 2012 he and appellant were walking to get documents signed and appellant slipped and fell on the ice. Mr. Chamblee reported that he and guards assisted appellant to his feet. Similarly, in an April 1, 2013 witness statement from Mr. Alexander, a supervisor, he noted that on December 31, 2012,

[4] *Gary J. Watling*, 52 ECAB 357 (2001).

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

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

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

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

appellant reported that he slipped and fell on ice and injured his back when he was walking down a hill in the snow behind a shop. Mr. Alexander noted that one of his employees took appellant to the main hospital for examination. Additionally, the supervisor's report on appellant's February 5, 2013 traumatic injury claim, Mr. Cross, noted that appellant was in the performance of duty when injured and noted that his knowledge of the facts about the injury were consistent with appellant's statements. The history of injury noted by healthcare providers, Dr. Chhieng and a nurse practitioner, is consistent with the history provided by appellant. The Board finds that appellant's statements are consistent with the surrounding facts and circumstances and thus has established that he experienced the employment incident on December 31, 2012.

The Board finds, however, that the medical evidence is insufficient to establish that appellant developed a low back and shoulder condition causally related to the December 31, 2012 work incident. On March 26, 2013 OWCP advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a medical report from an attending physician addressing how specific employment factors may have caused or aggravated his claimed condition.

Appellant submitted a January 19, 2013 report from Dr. Chhieng, who treated him for worsening back pain. He related the history of the December 31, 2012 incident to Dr. Chhieng and his subsequent symptoms. Dr. Chhieng noted that appellant had back surgery in 1988 as a result of a weight lifting injury. He diagnosed mechanical back pain with sciatica and progressive pain from the December fall in and prescribed oral analgesics. Dr. Chhieng recommended appellant return stateside for physical therapy and reevaluation. The Board finds that, although he supported causal relationship he did not provide medical rationale explaining the basis of his conclusion regarding the causal relationship between appellant's diagnosed conditions and the fall on ice. For instance, Dr. Chhieng failed to explain how the slip and fall accident would cause or aggravate the diagnosed conditions and why the condition was not caused by nonwork-related factors such as the previous weight lifting injury.

Appellant also submitted evidence from a nurse practitioner. However, this evidence is not considered medical evidence as the Board has held that nurses do not meet the definition of a physician under FECA.[9] Appellant also submitted a January 15, 2013 physician note signed by a provider with an illegible signature. This report is of no probative medical value as there is no indication that the document is from a physician.[10]

The record contains no other medical evidence. Because appellant has not submitted reasoned medical explaining how and why his diagnosed medical conditions were caused or aggravated by the December 31, 2012 work incident, he has not met his burden of proof.

[9] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

[10] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010) (reports lacking proper identification do not constitute probative medical evidence).

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 did not meet his burden of proof to establish that his claimed conditions were causally related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2013 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: December 3, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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