United States Department of Labor
Employees' Compensation Appeals Board

P.S., Appellant	)	
and	)	**Docket No. 12-1601**
	)	**Issued: January 2, 2013**
U.S. POSTAL SERVICE, POST OFFICE, New York NY, 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
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 23, 2012 appellant filed a timely appeal from a March 5, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her 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 this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on January 13, 2012.

FACTUAL HISTORY

On January 13, 2012 appellant, then a 67-year-old postal clerk, filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained a back, knee, stomach and rib cage injury. She stated that she was about to leave the postal floor for her lunch break when she

[1] 5 U.S.C. § 8101 *et seq.*

realized she forgot something and tripped and fell as a result of postcon webbing. The metal bar attached to the webbing then went into her rib cage area. Appellant's supervisor contested the claim stating that appellant's injury was not in the performance of duty because she was on her lunch break when the accident occurred.

By letter dated January 30, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In a February 23, 2012 narrative statement, appellant stated that the webbing outside of the postcon was not secured properly which caused her to get tangled in it. She then lost her balance and fell forward on her knees and stomach area. The metal bar attached to the webbing went into appellant's rib cage, causing her severe pain. She further noted that her knees were badly injured and that she experienced back pain from the fall. Appellant stated that her supervisor incorrectly attributed her fall to her inattentiveness and that the area was unsafe and not secure.

In support of her claim, appellant submitted return-to-work notes dated January 14 to February 9, 2012 from Dr. Victor Tenenbaum, Board-certified in family medicine, who reported that appellant was under his care for knee, rib and musculoskeletal pain and could return to work on February 28, 2012.

In a February 22, 2012 attending physician's report (Form CA-20), Dr. Tenenbaum reported that on January 13, 2012 appellant was on her way to lunch and tripped and fell. He diagnosed musculoskeletal rib pain and soft tissue knee injury. Dr. Tenenbaum checked the box marked "yes" when asked if he believed appellant's condition was caused or aggravated by her employment activity.

By decision dated March 5, 2012, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that she sustained an injury. It found that the incident occurred as alleged; however, that the evidence failed to provide a firm medical diagnosis which could be reasonably attributed to the accepted employment incident. OWCP further noted that the medical evidence submitted contained a diagnosis of "pain" which is a symptom and not a diagnosed medical condition.

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; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the

employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.[3]

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.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.[5] Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation, is causally related to the accepted injury.[6]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[7]

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.[8] The opinion of the physician must be based on 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.

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[2] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

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

[5] *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.

[6] *Supra* note 4.

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

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

This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. 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.[9]

ANALYSIS

OWCP accepted that the January 13, 2012 incident occurred as alleged. The issue, therefore, is whether appellant submitted sufficient medical evidence to establish that the employment incident caused a knee, rib, back and stomach injury. The Board finds that she did not submit sufficient medical evidence to support that she sustained an injury causally related to the January 13, 2012 employment incident.[10] The medical evidence is deficient on two grounds: first, it fails to provide a firm diagnosis; and second, there is no narrative opinion on causal relationship between a diagnosed condition and the employment incident.

Appellant submitted return-to-work slips dated January 14, 2012 incident to February 9, 2012 from Dr. Tenenbaum which noted that she was being treated for knee, rib and musculoskeletal pain. Dr. Tenenbaum's notes do not mention a work-related incident or name a specific injury and are insufficient to establish appellant's claim.

In a February 22, 2012 attending physician's report, Dr. Tenenbaum reported that on January 13, 2012 appellant was on her way to lunch and tripped and fell. He diagnosed musculoskeletal rib pain and soft tissue knee injury. Dr. Tenenbaum checked the box marked "yes" when asked if he believed appellant's condition was caused or aggravated by her employment activity.

The Board finds that the opinion of Dr. Tenenbaum is not well rationalized. Dr. Tenenbaum's diagnosis of musculoskeletal rib pain is a description of a symptom rather than a clear diagnosis of the medical condition.[11] Further, he did not provide any kind of diagnosis or detail regarding appellant's soft tissue knee injury. Dr. Tenenbaum did not describe, explain or diagnose her medical conditions, making it almost impossible to establish causal connection in her claim. Moreover, although he checked the box marked "yes" when asked if he believed appellant's condition was caused or aggravated by her employment activity, his report provides no diagnosis as well as no support for that conclusion. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[12] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of

[9] *James Mack*, 43 ECAB 321 (1991).

[10] *See Robert Broome*, 55 ECAB 339 (2004).

[11] The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[12] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

employment.[13] Thus, Dr. Tenenbaum's medical report is insufficient to establish appellant's burden of proof.

Appellant herself has alleged that the accepted January 13, 2012 incident caused her employment injury. Her statements, however, do not constitute the medical evidence necessary to establish a causal relationship between the January 13, 2012 employment incident and her alleged injuries. Thus, appellant has failed to establish her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on January 13, 2012 in the performance of duty.

ORDER

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

Issued: January 2, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

[13] *See Lee R. Haywood*, 48 ECAB 145 (1996).