

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

A.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Selma, AL, Employer**

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**Docket No. 13-587
Issued: June 24, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 15, 2013 appellant filed a timely appeal from an October 15, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has established an injury in the performance of duty on August 22, 2012.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted additional medical evidence. The Board can review only evidence that was before OWCP at the time of the October 15, 2012 final decision.

FACTUAL HISTORY

On September 11, 2012 appellant, then a 48-year-old letter carrier, submitted a traumatic injury claim (Form CA-1) alleging that he sustained a right ankle injury in the performance of duty on August 22, 2012. He stated that he had a back condition which caused numbness in his legs and this caused him to fall and injure his right ankle. Appellant submitted a Form CA-16 report dated August 22, 2012 from Dr. Glenton Davis, a family practitioner, diagnosing right ankle sprain. By letter dated September 14, 2012, OWCP requested additional factual and medical evidence.

In a statement dated September 27, 2012, appellant stated that he had a “V.A.” [Veterans Administration] medical condition, sclerosis of the sacroiliac. According to him, this condition causes sudden back pain and results in a fall wherever he is standing or walking. Appellant stated that the condition caused his fall on August 22, 2012. He indicated that he began to walk down steps after delivering mail, stepping with his right foot first when a sudden onset of back pain caused his legs to collapse and he fell down several steps.

With respect to medical evidence, appellant submitted a June 15, 2009 report from Dr. Davis stating that appellant had chronic sclerosis of the sacroiliac with muscle spasms, which was “service connected.” Dr. Davis reported the condition can cause chronic pain without prior notice.

In a report dated September 19, 2012, Dr. Stephen Samelson, a Board-certified orthopedic surgeon, reported that appellant had a history of an ankle injury on August 22, 2012. He stated that appellant “had a sudden onset of back pain which caused him to collapse, fall down some steps and roll his right ankle.” Dr. Samelson stated that x-rays were negative and a magnetic resonance imaging (MRI) scan showed some edema of the talus. He diagnosed right ankle sprain with talar contusion.

In a report dated September 24, 2012, Dr. Davis stated that appellant was seen for “follow up right ankle strain caused by fall. Pain in the back, injury to right ankle.” He diagnosed right ankle strain and recommended light duty.

By decision dated October 15, 2012, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish the claim, as Dr. Samelson did not provide a complete history and Dr. Davis opined that the injury was causally related to a military service condition.

LEGAL PRECEDENT

FECA provides for the payment of compensation for “the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”³ The phrase “sustained while in the performance of duty” in FECA is regarded as the equivalent of the commonly found requisite in workers’ compensation law of “arising out of an in the course of

³ 5 U.S.C. § 8102(a).

employment.”⁴ An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.⁵ 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. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁶

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.⁷ 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.⁸

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and 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 the analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁹

ANALYSIS

In the present case, appellant alleged that he fell on steps while in the performance of duty on August 22, 2012. As to the factual aspect of the claim, OWCP accepted that an incident occurred as alleged. Appellant alleged that he fell as he was descending steps while on his mail route.

The issue therefore becomes whether the medical evidence establishes a diagnosed condition causally related to the incident. In this case neither, Dr. Samelson nor Dr. Davis provided a medical opinion on causal relationship with employment. As noted above, the opinion must be a rationalized opinion based on a complete background. Dr. Samelson did not provide a complete history in his September 19, 2012 report. It is particularly important to have an accurate medical background in this case, as the record indicates that appellant had a

⁴ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁵ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁶ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

⁸ *Id.*

⁹ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

preexisting back condition. Dr. Samelson noted a sudden onset of back pain, without providing further explanation.

In the October 15, 2012 decision, OWCP stated that Dr. Davis found that any injury was related to a military service-connected condition. The deficiency in the September 24, 2012 report from Dr. Davis is that he failed to provide either a complete background or a rationalized medical opinion on the issue presented. Dr. Davis briefly noted back pain and a right ankle strain caused by a fall, without further explanation.

The Board notes that appellant stated that his fall was caused by a preexisting back condition resulting from military service. The issue of the contribution by a preexisting condition is a medical issue that must be resolved by medical evidence.¹⁰ Moreover, a condition resulting from military service is not an employment-related injury under FECA.¹¹ If a fall is sustained as a result of a nonemployment-related condition, and there is no contribution from employment, a resulting injury is not compensable.¹² In this case the medical evidence submitted does not address any of the relevant medical issues.

Based on the evidence of record, the Board finds that appellant has not established an injury in the performance of duty on August 22, 2012. It is appellant's burden of proof to establish the medical component of his claim for compensation, and the reports from Drs. Samelson and Davis are of diminished probative value to the issues presented.

On appeal, appellant stated that Dr. Davis had failed to send information and documents to Dr. Samelson regarding appellant's medical history. Based on the evidence before OWCP, he did not establish the claim for compensation.

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 established an injury in the performance of duty on August 22, 2012.

¹⁰ See *R.M.*, Docket No. 09-259 (issued September 24, 2009).

¹¹ Claims for injury resulting from military service are administered under VA legislation. See *Arthur A. Dube*, 32 ECAB 619 (1981).

¹² See *John R. Black*, 49 ECAB 624 (1998). The Board refers to such a fall as an idiopathic fall. An "unexplained" fall in the performance of duty whose cause is unknown would be compensable if a diagnosed condition is established as resulting from the fall. *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 15, 2012 is affirmed.

Issued: June 24, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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