United States Department of Labor
Employees' Compensation Appeals Board

J.D., Appellant	)	
and	)	**Docket No. 14-936**
	)	**Issued: August 8, 2014**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Cleveland, OH, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On March 18, 2014 appellant filed a timely appeal from a November 6, 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 this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on September 16, 2013.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence after OWCP rendered its November 6, 2013 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

FACTUAL HISTORY

On September 17, 2013 appellant, then a 54-year-old health technician, filed a traumatic injury claim (Form CA-1) alleging that on September 16, 2013 he was struck by a motor vehicle while riding in a government vehicle and sustained a back, neck, right wrist and shoulder injuries. He stopped work and first received medical care on September 16, 2013.

By letter dated September 24, 2013, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was asked to respond to the questions provided in the letter within 30 days.

In support of his claim, appellant submitted a September 17, 2013 medical report from Dr. Elizabeth W. Mease, Board-certified in internal medicine, who noted that appellant was involved in a motor vehicle accident (MVA) on September 16, 2013 and was transported by ambulance to Cleveland Clinic Hospital. He complained of pain in the neck, right shoulder and right wrist. Dr. Mease noted that x-rays of the cervical spine were negative and provided appellant with work restrictions.

By decision dated November 6, 2013, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained an injury because he did not submit any medical evidence containing a medical diagnosis in connection with the accepted September 16, 2013 employment incident.

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.[3] 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.[4]

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.[5] The second

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

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

[5] *Elaine Pendleton*, *supra* note 3.

component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6]

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.[7] 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. 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.[8]

ANALYSIS

There is no dispute that appellant was in the performance of duty when the motor vehicle accident occurred on September 16, 2013, as alleged. Therefore, the issue is whether appellant submitted sufficient medical evidence to establish that the employment incident caused an injury.

The only medical evidence received was a September 17, 2013 medical note from Dr. Mease who noted that appellant was involved in a motor vehicle accident on September 16, 2013 and transported to Cleveland Clinic Hospital immediately following the incident. Dr. Mease recorded complaints of pain in the neck, right shoulder and right wrist. X-rays of the cervical spine were negative and appellant was provided with work restrictions.

The Board finds that Dr. Mease's report is not sufficient to establish fact of injury. Dr. Mease failed to provide a firm medical diagnosis of any conditions alleged by appellant. Further, appellant's complaints of neck, shoulder and wrist pain is a description of a symptom rather than a clear diagnosis of a medical condition.[9] Thus, Dr. Mease's medical note is insufficient to establish appellant's burden of proof.

In the instant case, the record is without rationalized medical evidence establishing a diagnosed medical condition causally related to the accepted September 16, 2013 employment incident. OWCP advised appellant of the type of medical evidence required to establish his

[6] In clear-cut traumatic injury claims where fact of injury is established and competent to cause the condition described, such as a fall from a scaffold resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3d(1) (January 2013). In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required. *Id.* at Chapter 2.805.3d(2).

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

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

[9] 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).

claim; however, he failed to submit such evidence. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[10] An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.[11] Thus, appellant has failed to meet his burden of proof.

Lastly, the Board notes that OWCP did not adjudicate the issue of appellant's medical expenses incurred from the September 16, 2013 motor vehicle accident. Ordinarily, the employing establishment will authorize treatment of a job-related injury by providing the employee a properly executed Form CA-16 within four hours.[12] In this case, the record does not contain a Form CA-16 or any other authorization from OWCP for medical treatment. However, under section 8103 of FECA, OWCP has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances.[13]

In this case, appellant was transported to the emergency room for examination immediately after the employment incident. In denying appellant's claim for a traumatic injury, OWCP did not consider whether emergency circumstances or unusual circumstances were present or whether this was a situation in which reimbursement of medical expenses was appropriate.[14] It is required to exercise its discretion to determine whether medical care has been authorized, or whether unauthorized medical care involved emergency or unusual circumstances, and is therefore reimbursable regardless of whether the underlying claim for benefits has been accepted or denied.[15] On return of the record, OWCP should adjudicate the issue of reimbursement of medical expenses.[16]

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 his burden of proof to establish that he sustained a traumatic injury on September 16, 2013 in the performance of duty.

[10] *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[11] *D.D.*, 57 ECAB 734 (2006).

[12] *Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (September 1995).

[13] 5 U.S.C. § 8103; 20 C.F.R. § 10.304. *See L.B.*, Docket No. 10-469 (issued June 2, 2010); *D.R.*, Docket No. 10-1280 (issued February 1, 2011).

[14] *P.S.*, Docket No. 10-1560 (issued June 23, 2011).

[15] *Michael L. Malone*, 46 ECAB 957 (1995). *See Herbert J. Hazard*, 40 ECAB 973 (1989).

[16] *A.F.*, Docket No. 13-520 (issued May 17, 2013).

ORDER

IT IS HEREBY ORDERED THAT the November 6, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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