

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

A.G., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Louisville, KY, Employer)

**Docket No. 14-938
Issued: August 1, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief JJudge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 18, 2014 appellant filed a timely appeal from a September 19, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an employment-related injury. 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 met her burden of proof to establish that she sustained an injury in the performance of duty on August 10, 2013, as alleged.

On appeal, appellant contends that at the time of the injury she could not open her eye because of the severe pain and was advised to go to the doctor. She stated that there was no way

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of the September 19, 2013 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

of knowing at the time without doctor's supervision that there was no permanent damage to her eye.

FACTUAL HISTORY

On August 10, 2013 appellant, then a 40-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right eye injury that day as a result of being grazed by flat mail.

In an August 16, 2013 letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted an August 20, 2013 statement that she was injured on August 10, 2013 on Maysville Road while she was putting a flat into a mailbox. As she was reaching across the flat, it grazed her eye. Appellant stated that her eye started watering and became blurry and stinging. She pulled her car into the next driveway and called the employing establishment. Appellant denied any similar disability or symptoms before the injury.

Appellant submitted hospital records from Saint Joseph Mount Sterling dated August 10, 2013. She was seen and treated for a "minor right eye injury [with] no evidence of abrasion." The records listed a history of being "poked with a piece of mail while at work."

By decision dated September 19, 2013, OWCP accepted that the August 10, 2013 incident occurred. It denied the claim finding that appellant failed to submit sufficient medical evidence to establish a firm medical diagnosis causally related to the accepted incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time limitation period of FECA, that an injury⁴ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. A fact of injury determination is based on two elements. First, the employee must submit

³ 5 U.S.C. § 8101 *et seq.*

⁴ OWCP regulations define 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. 20 C.F.R. § 10.5(ee).

⁵ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁷

ANALYSIS

OWCP accepted that the employment incident of August 10, 2013 occurred at the time, place and in the manner alleged. The issue is whether appellant sustained an injury as a result. The Board finds that appellant did not meet her burden of proof to establish that she sustained an eye injury due to the August 10, 2013 employment incident.

Appellant submitted August 10, 2013 hospital records from Saint Joseph Mount Sterling. She was seen and treated for a “minor right eye injury [with] no evidence of abrasion” as a result of being “poked with a piece of mail while at work.” The Board finds that the diagnosis of “minor right eye injury [with] no evidence of abrasion” is a description of a symptom rather than a firm diagnosis of a medical condition.⁸ Moreover, there is no opinion from a physician addressing causal relationship of an eye condition to the accepted incident. The August 10, 2013 hospital records from Saint Joseph Mount Sterling are insufficient to establish a firm medical diagnosis or causal relation. Appellant has failed to establish fact of injury.

On appeal, appellant contends that at the time of the injury she could not open her eye because of severe pain and was advised by her supervisor and coworkers to seek treatment. As noted, the Board finds that appellant has not submitted sufficient medical evidence to support that she sustained an eye injury causally related to the August 10, 2013 employment incident.

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 met her burden of proof to establish that she sustained an injury in the performance of duty on August 10, 2013, as alleged.

⁶ *Id.* See Shirley A. Temple, 48 ECAB 404 (1997); John J. Carlone, 41 ECAB 354 (1989).

⁷ *Id.* See Gary J. Watling, 52 ECAB 278 (2001).

⁸ See P.S., Docket No. 12-1601 (issued January 2, 2013); C.F., Docket No. 08-1102 (issued October 10, 2008).

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 1, 2014
Washington, DC

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

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

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