United States Department of Labor
Employees' Compensation Appeals Board

W.D., Appellant	)	
and	)	**Docket No. 14-1453**
	)	**Issued: December 3, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Chicago, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
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 June 9, 2014 appellant, through his attorney, filed a timely appeal from a March 25, 2014 merit decision of an Office of Workers' Compensation Programs' (OWCP) hearing representative. 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 has met his burden of proof to establish a traumatic injury in the performance of duty.

FACTUAL HISTORY

On June 24, 2010 of traumatic injury claim was filed on behalf of appellant, then a 68-year-old ramp clerk. The claim asserted that he sustained a contusion when he slipped over a skid and fell while at work on June 21, 2010. Appellant stopped work on June 21, 2010.

[1] 5 U.S.C. § 8101 *et seq.*

A June 21, 2010 fire department incident report noted transporting appellant to a local emergency room. It advised that he slipped and fell at work resulting in right side rib cage pain and wrist pain. Responders found appellant lying on the floor when they arrived. Appellant related to responders that he lost his footing as he was walking on skids/pallets. A June 21, 2010 emergency department record advised that he was admitted into the intensive care unit. It advised that appellant hit his head as a result of a mechanical fall. Appellant was diagnosed with hemoperitoneum and right abdominal hemorrhage. He complained of right rib and right wrist pain. A June 21, 2010 emergency department injury/minor illness history and physical report, advised that appellant slipped on the floor at work landing on his right wrist, elbow and chest wall. The report advised that he was experiencing abdominal pain and tenderness of the right chest wall and wrist. A June 21, 2010 nursing report noted that appellant arrived to the emergency department *via* ambulance. It specified that his pain assessment was 9 on a scale of 1 to 10.

In a June 21, 2010 report, Dr. Stephen Doundoulakis, Board-certified in diagnostic radiology and neuroradiology, advised that computerized tomography (CT) scans revealed high density fluid in the pelvis and mild fluid seen in the right abdomen. He advised that the high density fluid was likely hemoperitoneum. Dr. Doundoulakis noted that appellant possibly had an adrenal hemorrhage. He also noted that there was mild induration seen on the right side of the abdomen, suggesting injury on the right side.

In a June 22, 2010 report, Dr. Luisa Orrico, Board-certified in internal medicine, noted that appellant fell on his right side while at work, resulting in right abdominal pain. She advised that CT scans of the abdomen revealed hemoperitoneum around the right kidney and liver, extending into the pelvis. Dr. Orrico diagnosed intraabdominal hemorrhage secondary to trauma. She noted that appellant had a history of coronary artery disease, with stenting in 2009, and hypertension that were currently stable. In a June 23, 2010 statement, Dr. Orrico noted his hospitalization on June 21, 2010 for injuries post fall while at work. She advised that appellant was stabilized and released on June 23, 2010. Dr. Orrico noted that he should not return to work for two weeks.

In a June 22, 2010 consultation report, Dr. Andrew Sherman, Board-certified in critical care and pulmonary medicine, noted that appellant suffered a mechanical fall at work striking his head and the right side of his chest and flank. He advised that the consultation was for appellant's anemia secondary to intraabdominal hemorrhage. Dr. Sherman noted that appellant presented with right side abdominal pain. He further advised that rib x-rays were negative; however, CT scans revealed intraperitoneal blood. Dr. Sherman noted that appellant was stable the morning following the incident, yet he complained of pelvis pain on his right side.

On June 7, 2011 and May 29, 2013 appellant's counsel asked that OWCP develop the claim as appellant sustained more than a contusion from the June 21, 2010 incident.

In a June 4, 2013 letter, OWCP notified appellant that it initially allowed a limited amount of medical expenses as the employing establishment did not controvert continuation of pay or controvert the merits of the claim. It indicated that it would now fully develop the claim. OWCP advised appellant to submit a medical report that included a diagnosis and a physician's opinion on causal relationship supported by medical rationale.

In a January 17, 2013 report, Dr. Reji Ninan, a Board-certified family practitioner, noted first treating appellant on September 15, 2011. She advised that he had a work-related injury on June 21, 2010 when he fell onto his flank region. Dr. Ninan stated that appellant lost consciousness and was taken to a hospital. She advised that CT scans revealed hemoperitoneum and right adrenal gland hemorrhage. Dr. Ninan further advised that a subsequent October 27, 2012 CT scan showed no residual damage to appellant's adrenal glands or abdominal viscera. Appellant also resubmitted records of his hospital treatment.

By decision dated August 27, 2013, OWCP denied appellant's claim because medical evidence did not establish that the diagnosed condition was causally related to a work-related incident.

On September 3, 2013 appellant, through his attorney, requested a telephone hearing which was held on February 3, 2014. During the hearing, he noted that he was off work for four to five days and returned to a "sit-down" job. Appellant stated that he subsequently retired when the employing establishment closed the facility where he worked. He further advised that his medical bills totaled approximately $20,000.00.

By decision dated March 25, 2014, the hearing representative affirmed the denial of appellant's claim because the medical evidence did not establish that the diagnosed condition was causally related to the established work incident.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[2] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[3] The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.[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 or she 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 employing establishment incident caused a personal injury.[5]

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[3] *R.C.*, 59 ECAB 427 (2008).

[4] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

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.[6]

ANALYSIS

The evidence supports that on June 21, 2010 appellant fell while at work. Therefore, the Board finds that the first component of fact of injury is established. However, the medical evidence is insufficient to establish that the diagnosed condition of abdominal hemorrhage and anemia was due to the June 21, 2010 incident.

In her June 22, 2010 report, Dr. Orrico noted that appellant fell on his right side while at work and advised that CT scans of the abdominal revealed hemoperitoneum around the right kidney and liver, extending into the pelvis. She diagnosed intraabdominal hemorrhage secondary to trauma. Although this report identifies the history of appellant's injury and states that his hemorrhage was secondary to trauma, Dr. Orrico failed to specifically explain how the workplace fall on June 21, 2010 caused the diagnosed internal injuries. Likewise, in her June 23, 2010 statement, Dr. Orrico noted his hospitalization for injuries after a workplace fall and advised that he should not work for two weeks but she did not explain how the workplace fall caused or aggravated the particular diagnosed conditions. Thus, these reports are insufficient to establish appellant's claim.

In a June 22, 2010 consultation report, Dr. Sherman noted appellant's fall at work and advised that he was seeing appellant for anemia secondary to intraabdominal hemorrhage. While he noted the history of the June 21, 2010 fall at work, he did not specifically address how the diagnosed conditions were caused or aggravated by the workplace fall. In a January 17, 2013 report, Dr. Ninan advised that appellant had a work-related injury when he fell onto his flank region on June 21 2010. She advised that initial CT scans revealed hemoperitoneum and right adrenal gland hemorrhage but that a subsequent October 27, 2012 CT scan showed no residual damage to appellant's adrenal glands or abdominal viscera. Although Dr. Ninan referenced a work injury, it appears that she is repeating the history provided by appellant. In any event, she noted that diagnostic testing showed appellant's conditions had since resolved and she did not otherwise provide medical rationale explaining how the workplace fall caused or aggravated the diagnosed medical conditions for any particular period. Therefore, these reports are not sufficient to establish the claim.

Dr. Doundoulakis' June 21, 2010 diagnostic test report is of limited probative value as he did not indicate that any diagnosed condition was causally related to the June 21, 2010

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

workplace fall.[7] Furthermore, initial hospital records from nurses and nonphysicians are insufficient to establish the claim as medical evidence must be provided by a physician.[8]

As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.[9] The physician must accurately describe appellant's work duties and medically explain the process by which these duties would have caused or aggravated a diagnosed condition.[10] Because appellant has not provided such medical opinion evidence in this case, he has failed to meet his burden of proof.

Appellant may submit new evidence or argument as part of a formal 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 establish a traumatic injury in the performance of duty on June 21, 2010.

[7] *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (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).

[8] *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[9] *See supra* note 6.

[10] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2014
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