United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 13-2159**
	)	**Issued: March 18, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Chicopee, MA, 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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On September 23, 2013 appellant filed a timely appeal from a March 29, 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 has established an injury in the performance of duty on April 29, 2010.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted evidence after March 29, 2013, the date of the decision on appeal. The Board is limited to review of the evidence that was before OWCP at the time of the final decision on appeal. 20 C.F.R. § 501.2(c)(a).

FACTUAL HISTORY

On February 15, 2013 appellant filed with OWCP a traumatic injury claim (Form CA-1) alleging that on April 29, 2010 he sustained injuries to his low back, right shoulder, neck and elbows. The claim form was dated August 22, 2011 and the reverse of the form indicated that his employment as a city carrier was terminated on May 14, 2011. Appellant alleged that on April 29, 2010 he was injured while stepping down from his vehicle to report an accident, when "the seat belt strap pulled me back against the door." By letter dated February 25, 2013, OWCP requested that he submit additional factual and medical evidence to establish his claim.

On March 25, 2013 appellant submitted additional evidence. A July 28, 2010 magnetic resonance imaging (MRI) scan report stated that he had advanced interstitial partial tear of the infraspinatus tendon with a small amount of bursal involvement, as well as infraspinatus, subscapularis and supraspinatus tendinopathy. Appellant also submitted an April 29, 2010 note diagnosing low back pain and right shoulder contusion. The note contains the name of a referral physician but is not signed by a physician. A brief note dated April 29, 2010 from Dr. Michael Noonan, an emergency medicine specialist, indicated that appellant was unable to work April 30 and May 1, 2010. In a note dated September 29, 2010, a physician's assistant indicated that appellant should limit repetitive motion with his right arm for eight weeks. Appellant also submitted a motor vehicle accident report (SF-91) dated April 29, 2010. On the form a box is checked that the vehicle was "privately owned" and a box checked "injured" without further explanation.

By decision dated March 29, 2013, OWCP denied the claim for compensation. It found that the factual and medical evidence was not sufficient to establish the claim.

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 and in the course of 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

[3] 5 U.S.C. § 8102(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.

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]

With respect to the first component of fact of injury, the employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[7] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.[8] An employee has not met his burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[9] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[10] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[11]

As to the second component, unless the condition is a minor one which can be identified on visual inspection,[12] or a clear-cut claim such as a fall resulting in a broken arm, a rationalized medical opinion supporting causal relationship is required.[13] 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.[14]

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

[7] *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

[8] *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

[9] *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[10] *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

[11] *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

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

[13] *Id.*

[14] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

ANALYSIS

In the present case, appellant filed a claim for a traumatic injury on April 29, 2010.

The evidence that was submitted to OWCP as of March 29, 2013 is not sufficient to establish either the factual or medical component of "fact of injury" as noted above. Appellant gave only a brief description of an alleged incident on April 29, 2010. The circumstances of the injury are unclear, as appellant submitted a motor vehicle accident report involving a private vehicle and an injury from the accident. On the CA-1 claim form appellant referred only to getting caught in a seat belt strap as he was attempting to report an accident. In addition, there was a delay in completing the CA-1 form (signed August 22, 2011) and apparently the form was not submitted to OWCP until February 15, 2013. A proper factual statement should clearly describe the incident as well as discuss the delay in completing and filing the claim form.

As to the medical component, the Board notes that any medical evidence must be from a physician under FECA.[15] In addition, as noted above, there must be a rationalized medical opinion as to a diagnosed condition causally related to an April 29, 2010 employment incident. Appellant submitted some evidence from a physician's assistant which is of no probative value as a physician's assistant is not a physician under FECA.[16] It is also well established that medical evidence lacking proper identification is of no probative medical value.[17] Any note or report that is not properly signed by a physician is of no probative value. The brief note from Dr. Noonan dated April 29, 2010, does not provide a rationalized medical opinion on the issues presented.

The Board accordingly finds that appellant did not meet his burden of proof to 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 did not meet his burden of proof to establish an injury in the performance of duty on April 29, 2010.

[15] *See* 5 U.S.C. § 8101(2).

[16] *George H. Clark*, 56 ECAB 162 (2004).

[17] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 29, 2013 is affirmed.

Issued: March 18, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board