

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

T.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Butler, PA, Employer)

Docket No. 14-1375
Issued: November 5, 2014

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On May 30, 2014 appellant timely appealed the December 27, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his traumatic injury claim. 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.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on November 13, 2013.

FACTUAL HISTORY

Appellant, then a 47-year-old city carrier assistant, claimed to have injured his right forearm while delivering mail on Wednesday, November 13, 2013. At approximately 11:00 a.m.

¹ 5 U.S.C. §§ 8101-8193 (2006).

that day, his lower right forearm began to hurt with wrist movement.² There were no reported witnesses to the alleged November 13, 2013 injury. The employing establishment challenged appellant's traumatic injury claim, noting that the mere manifestation of pain during his tour of duty did not render the condition work related.

On November 25, 2013 OWCP advised appellant that the information received thus far was insufficient to support his traumatic injury claim. First, it noted that his CA-1 form did not include a description of the November 13, 2013 work incident that allegedly caused his injury. OWCP asked appellant to provide a detailed description as to how his injury occurred, including where he was and what he was doing at the time. Additionally, it advised him of the need to submit medical evidence from a qualified physician. Appellant had 30 days to submit the requested factual and medical information. OWCP explained that, if the information was not received within the allotted period, a decision would be made based on the current record.

Appellant failed to provide the requested factual statement, but OWCP did receive various medical records, which included emergency department treatment records from Butler Memorial Hospital. He was initially seen in the emergency department on November 14, 2013. Appellant reported that, when delivering mail the previous day (November 13, 2013), he experienced pain in his forearm, which worsened as the day went on. He received a diagnosis of right forearm/wrist strain. No medication was prescribed and appellant was released to resume work on November 15, 2013.³

Appellant returned to the emergency department on Friday, November 15, 2013 with complaints of right forearm pain, which worsened with movement. A right wrist x-ray was negative. The film revealed no fracture or other acute osseous abnormality. Appellant received a diagnosis of wrist strain. His injured wrist was placed in a Velcro splint, which he was to wear for one week.

The November 15, 2013 emergency department records included varying accounts of when and/or how appellant's right arm complaints arose. In one version, appellant reportedly attributed his right forearm pain to heavy lifting on Wednesday, November 13, 2013. At the time, he was carrying a heavy load and midway through the day his right forearm started to hurt. In a November 15, 2013 report, Dr. Maciej Kedzierski, Board-certified in emergency medicine, noted that appellant's forearm pain reportedly began on Thursday, November 14, 2013 when he reached into his postal bag to grab a flier and felt a pull. The November 15, 2013 emergency department records also indicated that he reported that the pain started several days ago when he was carrying a heavy mailbag and moved his arm back to take mail out of the bag.

Roger A. Percy, a certified nurse practitioner, saw appellant on November 22, 2013 and diagnosed right forearm strain, with a November 13, 2013 date of injury. He noted that appellant had worked as a mail carrier since 2006 and reportedly developed pain in his right forearm/wrist on November 13, 2013. Mr. Percy also reported that appellant was seen in the emergency

² Appellant reported that he experienced pain when gripping and rotating his wrist. He did not submit any medical documentation with his November 13, 2013 claim (Form CA-1).

³ Although the caregiver's signature is illegible, appellant appears to have been treated by a certified physician assistant.

department on November 15, 2013 where x-rays revealed no fracture. Appellant had no prior history of a right arm injury. His current condition was reportedly aggravated by the repetitive nature of his job. The wrist splint that appellant received in the emergency department was not helping.⁴ He had been taking ibuprofen, but Mr. Percy prescribed meloxicam (NSAID) instead. Mr. Percy also recommended moist heat and physical therapy if appellant's condition did not improve. He released appellant to perform his normal duties and instructed him to return in 10 days.

Appellant returned on December 3, 2013 for a follow-up examination. Mr. Percy noted that appellant continued to perform his regular duties. Appellant tried meloxicam for a few days, but found ibuprofen to be more effective. He also had not been using the wrist splint. Appellant's condition had improved with stretching exercises and he was not currently in any pain. Physical examination revealed only modest tenderness at the mid-forearm. Appellant exhibited full range of motion at the wrist and elbow. Mr. Percy indicated that appellant's condition had improved but remained symptomatic. He continued to diagnose right forearm strain and advised appellant to return as needed.

In a December 27, 2013 decision, OWCP denied appellant's claim because he failed to establish fact of injury. It explained that the record lacked a detailed factual statement explaining how the alleged November 13, 2013 injury occurred. Additionally, OWCP found that the medical evidence submitted did not contain sufficient medical rationale to establish causation.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁵

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁶ The second component is whether the employment incident caused a personal injury.⁷

⁴ Appellant reportedly had a smaller splint he wanted to try, which Mr. Percy was not opposed to him using.

⁵ 20 C.F.R. § 10.115(e), (f) (2012); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

Certain health care providers such as physician assistants, nurse practitioners, physical therapists and social workers are not considered “physician[s]” as defined under FECA.⁸ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.⁹

ANALYSIS

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on November 13, 2013. Appellant claimed to have injured his right upper extremity while delivering mail. However, he did not indicate precisely what he was doing at 11:00 a.m. on November 13, 2013 when his lower right forearm began hurting. OWCP asked appellant to provide a detailed description as to how his injury occurred, including where he was and what he was doing at the time. Appellant did not provide the requested factual information and there were no reported witnesses.

Appellant bears the burden of establishing the essential elements of his claim, which includes fact of injury. Other than noting that he was delivering mail at the time, he did not provide specific details of a particular work activity or incident that gave rise to his right forearm pain. An employee’s statement alleging that an incident or exposure 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.¹⁰ In the absence of such a statement, OWCP properly found that appellant failed to establish fact of injury. Moreover, the Board notes that the November 15, 2013 emergency department treatment records provided varying accounts of when and how he reportedly injured his right wrist/forearm. Under the circumstances, OWCP properly determined that appellant had not established that the incident occurred as alleged.

CONCLUSION

Appellant failed to establish that he sustained an injury in the performance of duty on November 13, 2013.

⁸ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

⁹ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

¹⁰ *N.S.*, 59 ECAB 422, 425 n. 10 (2008).

ORDER

IT IS HEREBY ORDERED THAT the December 27, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board