United States Department of Labor
Employees' Compensation Appeals Board

E.T., Appellant	)	
	)	
and	)	**Docket No. 14-1087**
	)	**Issued: September 5, 2014**
DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, Terre Haute, IN, Employer	)	
	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 10, 2014 appellant filed a timely appeal from an October 22, 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 August 14, 2013.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted evidence after the issuance of the October 22, 2013 decision. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On September 6, 2013 appellant, then a 40-year-old vocational trade instructor, filed a traumatic injury claim (Form CA-1) alleging scrapes and abrasions to his hand and a lower back strain as a result of an attempted assault by an inmate during a trip to the local hospital on August 14, 2013. Appellant's supervisor, Diane Quinones, checked a box indicating that appellant had been injured in the performance of duty. She also checked a box indicating that her knowledge of the facts about this injury correlated with the statements of appellant and/or other witnesses. Ms. Quinones noted that appellant had returned to work the next day.

Appellant submitted a prescription slip for Augmentin with an illegible signature. He also submitted unsigned discharge instructions from Terre Haute Regional Hospital dated August 14, 2013, indicating diagnoses of scrapes and abrasions, and back pain and injury. The discharge instructions listed appellant's treating provider as Robin Likens, nurse practitioner.

In a radiological report dated August 14, 2013, Dr. Janalyn Ferguson, a Board-certified radiologist, obtained an x-ray of appellant's lumbar spine. She noted no evidence of fracture or other acute abnormality.

On September 17, 2013 OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he respond to its inquiries and submit a comprehensive medical report from an attending physician including dates of examination and treatment, the history and date of injury given to him by the physician, a detailed description of findings, results of all x-ray and laboratory tests, a diagnosis and clinical course of treatment and an opinion based on medical explanation as to how the claimed work incident caused or aggravated his claimed injury. Appellant resubmitted his prescription slip, unsigned discharge instructions, and Dr. Ferguson's radiological report, but did not respond to OWCP's inquiries.

By decision dated October 22, 2013, OWCP accepted that appellant was a federal civilian employee who filed a timely claim; that the incident occurred; that a medical condition had been diagnosed; and that he was within the performance of duty. However, it denied appellant's claim for compensation. OWCP found that the medical evidence of record was insufficient to establish that appellant's diagnosed conditions were causally related to the incident of August 14, 2013.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 and/or specific condition for which compensation is claimed are causally related to the

[3] 5 U.S.C. § 8101 *et seq.*

employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[6] 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.[7] 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.[8]

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.[9] An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.[10]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[11] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and compensable employment factors.[12] 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.[13]

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[4] *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

[5] *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

[6] *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4 at n.5.

[7] *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

[8] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 4 at n.5.

[9] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[10] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[11] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

[12] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[13] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

OWCP accepted the employment incident of August 14, 2013. The issue is whether appellant has submitted sufficient evidence to establish that he sustained scrapes and abrasions to the hand, as well as back strain, as a result of this incident. The Board finds that appellant has not submitted sufficient medical evidence to establish an injury causally related to the August 14, 2013 employment incident.

The Board notes that, pursuant to the Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011), where the condition reported is a minor one, such as a burn, laceration, insect sting or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report and no development of the case need be undertaken, if the injury was witnessed or reported promptly, no dispute exists as to the occurrence of the injury and no time was lost from work due to disability.[14] This section of the procedure manual further states that in cases of serious injury (motor vehicle accidents, stabbings, shootings, *etc*.) if the agency does not dispute the facts of the case, and there are no questionable circumstances, the case may be accepted for a minor condition, such as laceration, without a medical report, while simultaneously developing the case for other more serious conditions. This is true even if there is lost time due to such a serious injury.

Board case precedent supports the application of this principle only when the claimed injury is sufficiently described in the evidence of record. The Board reviewed a similar case in *M.A.*, Docket No. 13-1630 (issued June 18, 2014). In *M.A.*, the employee was a letter carrier who was bitten by a dog on his right hand, while he was reaching into a mailbox, such that the fingernail of the middle finger of his right hand was almost served in half. Appellant's supervisor attested that appellant was bitten by a dog on his right hand and that he sustained a severe cut on the middle finger of his right hand as a result. The Board found that the simple dog bite could be accepted without a medical report, as the supervisor had viewed the dog bite and accepted that it was work related. In *S.A.*, Docket No. 13-2152 (issued March 20, 2014), cited for support in *M.A.*, the Board concluded that consistent descriptions of a laceration of the third finger of the left hand constituted sufficient evidence of a minor condition that could be identified on visual inspection by a lay person and that other circumstances established appellant's claim.

In the instant case, the record does not contain a sufficient description of the claimed scrapes and abrasions to warrant application of the "minor injury" exception to the requirement for medical evidence. There is no evidence of record indicating which hand was injured, or describing the extent of the scrapes and abrasions or where they were located, as a result of the incident of August 14, 2013. The only description of this condition was "scrapes and abrasions." This description is imprecise and vague and, therefore, the injury is not sufficiently described in the evidence of record to support acceptance of scrapes and abrasions without a medical report.

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011). *M.A.*, Docket No. 13-1630 (issued June 18, 2014).

The Board also finds that appellant's claimed back strain is not a minor condition that can be identified on visual inspection by a lay person and, therefore, appellant must submit medical evidence establishing that the employment incident caused or aggravated his back strain.[15] There is no medical evidence of record containing a rationalized medical opinion explaining how the incident of August 14, 2013 caused or aggravated appellant's claimed back strain. The mere fact that a disease or condition manifests itself during a period of employment or the claimant's belief that the disease or condition was caused or aggravated by employment factors or incidents is insufficient to establish causal relationship.[16] As such, appellant has not met his burden of proof to establish a claim for back strain related to the August 14, 2013 incident.

The Board notes, however, that OWCP's implementing regulations allow for authorization of medical treatment in emergency circumstances. While 20 C.F.R. § 10.300 explains that authorization of emergency medical treatment is usually provided by issuance of a Form CA-16, section 10.304 allows for authorization of emergency treatment, in the absence of a Form CA-16, in cases involving emergencies or unusual circumstances.[17] While there was no Form CA-16 issued in this case, the record reveals that appellant was treated at Terre Haute Regional Hospital on August 14, 2013. Upon return of the case record, after such development deemed necessary, OWCP shall adjudicate whether appellant's treatment on August 14, 2013 should be authorized in this case due to an emergency or unusual circumstances.

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 establish that he sustained an employment-related injury on August 14, 2013.

[15] *Supra* note 7.

[16] *Dennis M. Mascarenas*, *supra* note 10; *Charles E. Evans*, 48 ECAB 692, 693 (1997).

[17] *See also K.J.*, Docket No. 13-271 (issued May 23, 2013).

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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