United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 14-152**
	)	**Issued: April 21, 2015**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 28, 2013 appellant filed a timely appeal of a June 6, 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury on February 12, 2013 in the performance of duty.

FACTUAL HISTORY

On February 12, 2013 appellant, then a 64-year-old housekeeping aid supervisor, filed a notice of traumatic injury. He alleged that at 2:45 that morning he injured his lower back while

[1] 5 U.S.C. § 8101 *et seq.*

pulling open a power door when the power was shut off. He sought medical treatment on February 12, 2013 from the employing establishment. A Record of Employee Treatment dated February 12, 2013 states that appellant pulled a door at work and developed low back pain. Appellant was diagnosed with sprain of the lumbosacral area, arthritis by x-rays and history of degenerative disc disease and provided work restrictions.

Dr. Richard Rudman, a Board-certified family practitioner, diagnosed mid or lower back strain on February 18, 2013 and prescribed physical therapy on a prescription slip. Appellant subsequently received physical therapy.

In a letter dated May 2, 2013, OWCP noted that appellant's claim had initially been handled as a minor injury, and that payment for a limited amount of medical expenses was administratively approved. The letter requested additional factual information from appellant regarding the employment incident and medical opinion evidence regarding the relationship between the injury and the diagnosed condition. OWCP allowed appellant 30 days for a response.

Appellant submitted a CA-20 form report from Dr. Rudman dated May 10, 2013 diagnosing acute mid and low back strain. Dr. Rudman determined that forcibly opening the nonfunctioning electric door while at work on February 12, 2013 caused or aggravated his condition.

By decision dated June 6, 2013, OWCP denied appellant's claim finding that he failed to submit the necessary factual evidence to establish that he experienced the employment incident at the time, place, and in the manner alleged. It also noted that appellant had not submitted any narrative medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

OWCP defines 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

[2] 5 U.S.C. §§ 8101-8193.

[3] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

time and place of occurrence and member or function of the body affected."[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 which is alleged to have occurred.[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. 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. An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. 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. 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.[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] A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[9] Medical rationale includes a physician's detailed opinion on the issue of whether these is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.[10]

ANALYSIS

In its June 6, 2013 decision, OWCP denied appellant's claim because he had not responded to its May 2, 2013 request for additional information. However, the Board finds that

[5] 20 C.F.R. § 10.5(ee).

[6] *Elaine Pendleton, supra* note 3.

[7] *D.B.*, 58 ECAB 464, 466-67 (2007).

[8] *J.Z.*, 58 ECAB 529 (2007).

[9] *T.F.*, 58 ECAB 128 (2006).

[10] *A.D.*, 58 ECAB 149 (2006).

appellant has submitted sufficient factual evidence to establish that the employment incident occurred as alleged.

Appellant's statements on his claim form are consistent with the history provided in the employing establishment's medical report written within hours of the incident. Dr. Rudman's May 10, 2013 report, provided on a CA-20 form, contains a history identical to that provided to the employing establishment on the date of the alleged incident. Appellant stated that he injured his back on February 12, 2013 while opening a door at work. He sought medical treatment from the employing establishment on that date, and later from Dr. Rudman on February 18 and May 10, 2013. Appellant provided a timely notification of injury and received work restrictions as a result of his treatment.

The employing establishment has not controverted appellant's claim and the Board finds no evidence in the record to refute appellant's statements. Appellant's description of the time, place, and manner of his injury has not changed. On appellant's Form CA-1, Notice of Traumatic Injury, dated February 12, 2013, appellant's supervisor checked a box indicating that appellant was injured in the performance of duty, and indicated that his knowledge of the facts agreed with appellant's statement. The supervisor signed his portion of the form with a certification that the "the information given above and that furnished by the employee on the reverse of the form is true to the best of [his] knowledge, without noting any exceptions."

In many opinions, the Board has identified the level of inconsistency which may cause it to deny a claim because the incident alleged was not proven. Where an appellant provided four distinct accounts of the events surrounding an alleged injury, but failed to provide any witness statements or specific evidence of the mechanism of injury, the Board found that appellant had failed to prove compensability.[11] In a different claim, where appellant alleged a time, place, manner, and mechanism of injury, timely sought medical treatment, and where a supervisor confirmed that appellant had engaged in the activity alleged, the Board held that appellant had proved the incident and remanded the case to OWCP for a decision on the medical issues presented.[12] The Board finds that appellant has proved that the alleged incident occurred at the time, place, and in the manner alleged.

The Board further finds, however, that appellant has failed to submit rationalized medical opinion evidence to establish that the action of opening the door on February 12, 2013 resulted in a lumbar strain. While the medical evidence from the employing establishment is sufficient to establish the factual aspect of appellant's claim, neither the employing establishment's Record of Employee Treatment, nor the reports of Dr. Rudman explain how appellant's actions resulted in his diagnosed condition. To be considered rationalized medical evidence, a physician's opinion must be expressed in terms of reasonable medical certainty and must explain the relationship between the diagnosed condition and appellant's specific employment factors.[13] There is no rationalized medical opinion of record explaining why and how appellant's attempt to open the

[11] *Paul Foster*, 56 ECAB 208 (2004).

[12] *Larry D. Dunkin*, 56 ECAB 220 (2004).

[13] *S.D.*, 58 ECAB 428 (713 (2007).

automatic door resulted in the diagnosed lumbar sprain. Appellant has, therefore, failed to meet his burden of proof.

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 established that the employment incident occurred on February 12, 2013 while opening a door at his place of employment. The Board further finds that he has failed to establish that his diagnosed condition of back strain resulted from this incident. Appellant, therefore, has failed to establish his traumatic injury claim for back sprain on February 12, 2013.

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2013 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 21, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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