United States Department of Labor
Employees' Compensation Appeals Board

A.T., Appellant	)	
and	)	**Docket No. 15-632**
	)	**Issued: June 9, 2015**
DEPARTMENT OF THE ARMY, TANK AUTOMOTIVE & ARMAMENTS COMMAND, Texarkana, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 26, 2015 appellant filed a timely appeal from a December 10, 2014 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] 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 met his burden of proof to establish that he sustained an upper respiratory injury in the performance of duty on May 28, 2013.

FACTUAL HISTORY

On May 29, 2014 appellant, then a 53-year-old heavy mobile equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that on May 28, 2013 he sustained an upper

[1] 5 U.S.C. § 8101 *et seq.*

respiratory injury. He alleged that he was instructed to coat turpet gears with a spray lubricant. Appellant did not wear a mask, therefore, he inhaled the lubricant which resulted in dizziness. He first received medical treatment on May 28, 2013 the date of injury. Although the claim was filed a year late appellant's supervisor indicated that his knowledge of the facts of injury agreed with the statements made by appellant.

In support of his claim, appellant submitted May 28 and June 4, 2013 reports from Jeremy Hutson, a physician's assistant (PA), who reported that on May 28, 2013 appellant complained of a constant headache which had been present since May 21, 2013. PA Hutson noted that appellant was exposed to strong smelling chemicals about one week prior. While appellant did not have contact with the lubricant, the inhalation caused him a severe headache and he was unable to get relief through over the counter medications. PA Hutson diagnosed acute sinusitis and headache. In a June 4, 2013 report, he reported that appellant was originally seen on May 28 for a headache which began on May 21, 2013. PA Hutson diagnosed acute sinusitis and headache and released appellant medically, stating that he was expected to attain full resolution in seven days.

By letter dated June 3, 2014, the employing establishment controverted the claim for lack of evidence establishing fact of injury and causal relationship. It noted that appellant alleged exposure to fumes on May 28, 2013 but his medical reports indicated that he had a headache since May 21, 2013.

By letter dated June 9, 2014, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed to support his claim and was asked to respond within 30 days. He did not respond and no evidence was received.

By decision dated July 9, 2014, OWCP denied appellant's claim as the evidence was insufficient to establish that he sustained an injury. It found that the May 28, 2013 incident occurred as alleged; however, the evidence failed to provide a firm medical diagnosis which could be reasonably attributed to the accepted employment incident.

On August 7, 2014 appellant requested reconsideration of OWCP's decision. He stated that he initially submitted his supporting documents to the wrong person and was resubmitting this information on appeal.

In support of his claim, appellant resubmitted PA Hutson's June 4, 2013 report. He also submitted a June 4, 2013 duty status report (Form CA-17) and work status note signed by PA Hutson.

By decision dated December 10, 2014, OWCP affirmed the July 9, 2014 decision, as modified, finding that the evidence did not establish that appellant sustained an injury and also failed to establish that the incident occurred as alleged. It noted that his Form CA-1 indicated the date of injury as May 28, 2013, but the medical reports of record noted the date of injury as May 21, 2013.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 or specific condition for which compensation is claimed are causally related to the employment injury.[2] 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.[3]

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.[4] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. He or she must also establish that such event, incident, or exposure caused an injury.[5] Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.[6]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[7]

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[2] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Elaine Pendleton*, *supra* note 2 at 1143.

[5] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

[6] *Supra* note 3.

[7] *Betty J. Smith*, 54 ECAB 174 (2002).

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[8] The opinion of the physician must be based on 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS

The Board finds that appellant failed to establish that he sustained a respiratory injury in the performance of duty on May 28, 2013.

Appellant must establish all of the elements of his claim in order to prevail. He must prove his employment, the time, place, and manner of injury, a resulting personal injury, and that his injury arose in the performance of duty. In its December 10, 2014 decision, OWCP found that appellant did not establish that the incident occurred at the time, place, and in the manner alleged. The Board finds, however, that the evidence of record is sufficient to establish that the May 28, 2013 incident occurred, as alleged.

On his Form CA-1, appellant alleged that on May 28, 2013 he was instructed to coat turpet gears with a spray lubricant and was not wearing a mask, causing him to inhale the lubricant and become dizzy. Appellant's supervisor stated that his knowledge of the facts of injury agreed with the statements made by appellant. The employing establishment controverted the claim and stated that the medical reports submitted identified the date of injury as May 21, 2013 and not May 28, 2013 as appellant has alleged in this claim.

While the employing establishment may controvert whether the May 28, 2013 incident caused appellant his injury, it has not denied that he was exposed to fumes from a lubricant on that date and thus, cannot deny the alleged facts to establish that the incident did not occur at the time, place, and in the manner alleged. Appellant has alleged that exposure to hazardous fumes on May 28, 2013 caused him injury. His supervisor agreed with his allegations regarding fact of injury. Moreover, appellant received medical treatment on May 28, 2013, the alleged date of injury. While PA Hutson's reports stated that appellant's headache began on May 21, 2013 when he was exposed to hazardous fumes, this does not negate the fact that he could have also experienced exposure to hazardous fumes on May 28, 2013 causing injury. The Board does not find exposure to fumes on two different dates as sufficient to establish that the incident did not occur at the time, place, and in the manner alleged. Rather, these two dates become significant when discussing causal relationship in determining whether appellant's injury was caused by the May 28, 2013 exposure as alleged in this claim, the May 21, 2013 exposure as noted in

[8] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[9] *James Mack*, 43 ECAB 321 (1991).

PA Hutson's reports, or caused by an occupational exposure produced by his work environment over a period longer than a single workday or shift rather than an injury from a single occurrence within a single workday.[10] Thus, the Board finds that, given the above referenced evidence, appellant has alleged with specificity that the incident occurred at the time, place, and in the manner alleged.[11]

Given that appellant has established a May 28, 2013 employment incident, the question becomes whether he sustained an injury due to this incident. OWCP's December 10, 2014 decision found that he did not submit sufficient medical evidence to establish a firm medical diagnosis. The Board finds that he did not submit sufficient medical evidence to support that he sustained an injury causally related to the September 10, 2014 employment incident.[12] The medical evidence is deficient on two grounds: first, it fails to provide a firm diagnosis; and second, there is no narrative opinion on causal relationship between a diagnosed condition and the employment incident.

The only medical evidence received was a May 28 and June 4, 2013 report from PA Hutson, as well as a June 4, 2013 Form CA-17 and work status note. PA Hutson's reports are of no probative value and insufficient to establish appellant's claim as they are not signed by a physician. Registered nurses, licensed practical nurses, and physician's assistants, are not physicians as defined under FECA, and their opinions are of no probative value.[13] It is well established that a physician's signature is required on a report in order for it to be considered as medical evidence.[14] Aside from the professional status of PA Hutson and even if the report was signed by a physician, the report itself is not sufficiently rationalized to establish a diagnosis that is causally related to the May 28, 2013 employment incident.[15]

[10] A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q). If appellant is alleging that his injury was produced from his work environment over a period longer than a single workday or shift, he should pursue his claim by filing an occupational disease claim (Form CA-2) and submitting rationalized medical evidence from a physician which describes how his federal employment duties caused his injury.

[11] *See Willie J. Clements*, 43 ECAB 244 (1991).

[12] *See Robert Broome*, 55 ECAB 339 (2004).

[13] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005).

[14] *B.M.*, Docket No. 11-725 (issued February 17, 2012).

[15] *Ceferino L. Gonzales*, 32 ECAB 1591 (1981). The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment. *See Lee R. Haywood*, 48 ECAB 145 (1996).

In the instant case, the record is without rationalized medical evidence establishing a diagnosed medical condition causally related to the accepted May 28, 2013 employment incident. Thus, appellant has failed to establish his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an upper respiratory injury in the performance of duty on May 28, 2013.

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: June 9, 2015
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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