United States Department of Labor
Employees' Compensation Appeals Board

H.P., Appellant	)	
	)	**Docket No. 15-111**
and	)	**Issued: March 20, 2015**
DEPARTMENT OF THE NAVY, COMMANDER NAVY INSTALLATIONS COMMAND, San Diego, CA, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 20, 2014 appellant filed a timely appeal from an August 29, 2014 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.

ISSUE

The issue is whether appellant has established an injury in the performance of duty.

FACTUAL HISTORY

On September 24, 2013 appellant, then a 48-year-old firefighter, filed a claim (Form CA-1) alleging that on September 13, 2013 he sustained an episode of dizziness, shortness of breath, chest pains, and a headache while responding to a report of a suspicious odor in a

[1] 5 U.S.C. § 8101 *et seq.*

building. Appellant's supervisor and a coworker provided witness statements asserting that appellant became shaky and sweaty while working on the roof of the building. Appellant complained of dizziness, difficulty breathing, and the sensation of a "knot" in his stomach. He stopped work at the time of injury and was transported by ambulance to a hospital. Appellant returned to work on September 20, 2013. On appeal, he noted that his supervisor filled out the claim form at the time of injury. Appellant signed the form after he returned to work.

September 13, 2013 emergency room intake forms relate appellant's account of "getting up a ladder for a fire call and I couldn't breathe and pain in my chest and I just didn't feel well." Dr. Evelyn Wells, Board-certified in emergency medicine, noted appellant's complaints of epigastric pain, which resolved shortly after his arrival in the emergency room. Appellant related that he developed anxiety symptoms after he returned to work following an occupational right shoulder injury several months previously. He described chest pain, shortness of breath, and belching.[2]

Dr. Sharon A. Steinman, a Board-certified internist, who attended appellant in the hospital, submitted September 13 and 14, 2013 reports noting appellant's history of panic disorder, depression, and hyperlipidemia. He presented to the emergency room with "shortness of breath, hand tremor, heart racing, and feelings of impending doom" which began when he climbed up a ladder during a fire call. Appellant's symptoms lasted approximately 20 minutes, and abated without treatment. Dr. Steinman related that appellant had experienced such symptoms three times within the past year without any provocation. Appellant sought emergency room care three times during the past year with diagnoses of anxiety disorder and panic attack. Dr. Steinman admitted appellant to rule out cardiac or hormonal tumor pathologies. She diagnosed panic attack disorder, depression not otherwise specified, and rule out post-traumatic stress disorder in view of the job injury and a remote parent-child conflict.

Dr. Eric M. Berger, a Board-certified psychiatrist affiliated with the admitting hospital, examined appellant on September 14, 2013. He related appellant's statement that "things have just gotten much more complicated since returning to work" following a shoulder injury. Appellant described incidents of awakening at night with tachycardia, shortness of breath, feelings of impending doom, and nightmares. He found "more impairment in the morning before work, driving to work and on the job." On September 13, 2013 appellant had an onset of symptoms while in full fire gear on the way to a fire call. He had underlying depression since he was in high school. Appellant became very moved when discussing his father's alcoholism and "the emotional torment he went through as did family members at the hands of his father." Dr. Berger noted that appellant had been prescribed psychiatric medications in the past and had responded well. On examination, appellant had a "somewhat labile and anxious affect." Dr. Berger diagnosed "[p]anic anxiety disorder, depression not otherwise specified, rule out post-traumatic stress disorder in view of the on[-]the[-]job injury and remote parent-child conflicts." He prescribed medication and recommended psychotherapy.

OWCP advised appellant on July 28, 2014 that the evidence submitted was insufficient to establish that working on a roof on September 13, 2013 would cause any injury or condition. It

[2] September 13, 2013 chest x-rays and an exercise nuclear stress test performed on September 14, 2013 were within normal limits.

afforded him 30 days to submit a statement describing the incident and its relation to his assigned duties, as well as a report from his attending physician addressing causal relationship. Appellant did not provide additional evidence prior to August 29, 2014.

By decision dated August 29, 2014, OWCP denied the claim on the grounds that fact of injury was not established. It accepted that the September 13, 2013 incident occurred in the performance of duty at the time, place, and in the manner alleged. OWCP found, however, that the medical evidence did not establish a causal relationship between climbing to the rooftop in full gear and any diagnosed injury or condition.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[3] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[4] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[6]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[7]

ANALYSIS

Appellant claimed that he sustained a panic attack on September 13, 2013 while responding to a fire call. He described a brief episode of respiratory, cardiac, and gastric symptoms which abated shortly after his arrival at a hospital emergency room. OWCP accepted that the work incident occurred as alleged. However, it denied the claim because the medical

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *T.H.*, 59 ECAB 388 (2008).

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

evidence did not establish that the incident caused or contributed to a diagnosed medical condition.

Dr. Wells, Board-certified in emergency medicine, related appellant's account of anxiety after returning to work following a shoulder injury. Dr. Steinman, a Board-certified internist, noted that appellant had three spontaneous panic attacks during the past year, with no known provocation. Appellant also had a history of depression, and described a very difficult relationship with his father. He told Dr. Berger, a Board-certified psychiatrist, that his anxiety symptoms developed following an occupational right shoulder injury, superimposed on a long-term history of depression and emotional abuse. Dr. Berger diagnosed "[p]anic anxiety disorder, depression not otherwise specified, rule out post-traumatic stress disorder in view of the on-the-job injury and remote parent-child conflicts." These reports are insufficient to establish the claim as neither physician explained how appellant's work duties on September 13, 2013 caused or contributed to a diagnosed medical condition.

On appeal, appellant contends that he submitted sufficient evidence to show that he became ill on September 13, 2013, after climbing to a rooftop while wearing full gear and a self-contained breathing apparatus. He argues that dispatch records and a crew roster prove that he was in the performance of his official duties when he experienced the panic attack. Appellant asserts that the fire crew who answered the call with him all witnessed his illness. He notes that the assistant fire chief filed the claim for him, and that his hospital record stated that he sustained anxiety due to stress. As stated above, OWCP accepted that appellant was in the performance of duty when he became ill on September 13, 2013. However, as explained, the medical evidence is insufficient to establish the claim. The mere fact that the attack occurred while appellant was working is insufficient to establish his claim. The Board has held that a temporal relationship alone is insufficient to establish causal relationship.[8]

The Board notes that OWCP advised appellant on July 28, 2014 of the necessity of submitting medical evidence supporting a causal relationship between the events of September 13, 2013 and the claimed panic attack. However, appellant did not submit such evidence.

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 not established that he sustained an injury in the performance of duty.

[8] *Louis R. Blair, Jr.*, 54 ECAB 348 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 29, 2014 is affirmed.

Issued: March 20, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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