United States Department of Labor
Employees' Compensation Appeals Board

D.H., Appellant	)	
and	)	**Docket No. 15-1680**
	)	**Issued: November 20, 2015**
U.S. POSTAL SERVICE, NETWORK DISTRIBUTION CENTER, Atlanta, GA, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 4, 2015 appellant filed a timely appeal from a July 22, 2015 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.

ISSUE

The issue is whether appellant met his burden of proof to establish an injury in the performance of duty on February 2, 2014.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 2, 2015 appellant, then a 55-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained an injury due to falling down stairs.[2] He indicated that he realized his condition was causally related to his employment on November 4, 2014. Appellant explained that he had used bio-freeze for two months before going to a specialist, who diagnosed a torn shoulder.

Appellant submitted a January 28, 2015 statement asserting that he had slipped and fallen on stairs at work. He reported that he had been cleaning up a spill and was carrying a tub of mail down the stairs when he fell. Appellant indicated that the fall was witnessed by his supervisor.[3] He reported that he continued to work and for a time he used a substance called bio-freeze on his shoulder and knees, before seeking treatment on March 14, 2014.

OWCP received a report dated March 14, 2014, signed by a physician assistant, indicating appellant had received treatment for left shoulder discomfort. In a report dated April 3, 2014, another physician assistant reported appellant had been seen for progressive left shoulder pain.

In a report dated July 3, 2014, Dr. Jeff Traub, an orthopedic surgeon, reported that appellant's left shoulder pain was better, but he still had some pain and was weak in the rotator cuff. He indicated that a magnetic resonance imaging (MRI) scan would be ordered. By report dated July 24, 2014, Dr. Traub noted that the MRI scan showed a full-thickness tear of the left rotator cuff. In an October 21, 2014 note, he indicated that appellant could return to work on November 4, 2014.

OWCP sent a February 3, 2015 letter, advising appellant that the medical evidence of record did not establish causal relationship between his left rotator cuff tear and the employment incident. It was also noted that reports from a physician assistant were not sufficient as a physician assistant is not considered a physician under FECA. Appellant was instructed to submit additional relevant evidence within 30 days. On February 17, 2015 he submitted a July 10, 2014 MRI scan report from Dr. John Reeder, a radiologist, reporting the results showed a left shoulder rotator cuff tear.

By decision dated March 10, 2015, OWCP denied the claim for compensation. It found an incident occurred as alleged, but that the medical evidence was insufficient to establish causal relationship with a diagnosed condition.

On April 10, 2015 appellant submitted a request for reconsideration. He indicated that he did not understand how the claim could be denied when the fall was witnessed by a supervisor.

[2] A CA-2 claim form is used for an occupational disease or illness, which is an injury produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q). Since appellant alleged an injury resulting from an incident that occurred during a single workday, OWCP properly considered his claim as a traumatic injury claim. *See* 20 C.F.R. § 10.5(ee).

[3] Appellant submitted a note from his supervisor dated February 11, 2015 indicating that he saw appellant fall on stairs on February 2, 2014.

Appellant submitted an April 2, 2015 report from Dr. Traub, who reported that he had first seen appellant on April 3, 2014. Dr. Traub indicated that at that time appellant had an injury to his rotator cuff, more likely than not a contusion. He noted the results on the July 10, 2014 MRI scan, and reported that appellant stated that his left shoulder had been asymptomatic "prior to his fall and injury at work…." Dr. Traub concluded that "if this is the case, then I can see with a reasonable degree of medical certainty that the fall and injury at work was the action that caused him to either tear his rotator cuff or aggravate a preexisting condition that was latent and not bothering him prior to the fall."

By decision dated July 22, 2015, OWCP reviewed the merits of the claim and denied modification. It found the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[4] The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."[5] An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.[6] 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. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[7]

OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[8] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[9]

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the

[4] 5 U.S.C. § 8102(a).

[5] *Valerie C. Boward*, 50 ECAB 126 (1998).

[6] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[7] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013).

[9] *Id.*, Chapter 2.805.3(d) (January 2013).

specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[10]

ANALYSIS

In the present case, appellant has alleged that he fell on stairs while in the performance of duty on February 2, 2014. OWCP accepted that an incident occurred as alleged. The issue is whether there is rationalized medical evidence establishing a diagnosed injury causally related to the employment incident.

The Board notes that appellant submitted March 18 and April 3, 2014 reports regarding left shoulder treatment. The March 18, 2014 report was signed by a physician assistant, and it is well established that a physician assistant is not a physician under FECA.[11] The April 3, 2014 report contained only a reference that it was dictated by a physician assistant. Although Dr. Traub reported he had seen appellant on April 3, 2014, the report of record does not contain his signature or any indication that he reviewed the content of the report.

As to the medical evidence from Dr. Traub, there is no report with a rationalized medical opinion on the issue presented. The July 3 and 21, and October 21, 2014 reports are brief and do not discuss the issue of causal relationship. In an April 2, 2015 report, Dr. Traub opined that appellant had sustained an injury resulting from a fall at work. This report is of diminished probative value to the issue presented. As noted above, a medical report must be based on a complete factual and medical background. Dr. Traub does not provide a complete factual or medical history. He referred to a fall at work, without providing any relevant details, such as the date of the incident and a clear description of the circumstances of the fall itself.

In addition, there is little medical rationale to support the opinion offered. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.[12] Dr. Traub also refers to the employment incident as causing a rotator cuff tear "or aggravating a preexisting condition." If he believes the fall caused a rotator cuff tear, he must explain how the condition found on the July 10, 2014 MRI scan was caused by the employment incident. If there was an aggravation, Dr. Traub should clearly explain the nature and extent of any aggravation.[13]

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[10] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[11] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.); *George H. Clark*, 56 ECAB 162 (2004); 5 U.S.C. § 8101(2).

[12] *See Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (because the employee is symptomatic after an injury is not sufficient to establish causal relationship without supporting rationale).

[13] *See W.F.*, Docket No. 14-0673 (issued July 9, 2014).

For the reasons noted, the Board finds that appellant did not meet his burden of proof based on the evidence of record. 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 meet his burden of proof to establish an injury in the performance of duty on February 2, 2014.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 22 and March 10, 2015 are affirmed.

Issued: November 20, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board