United States Department of Labor
Employees' Compensation Appeals Board

K.K., Appellant	)	
and	)	**Docket No. 15-1515**
	)	**Issued: October 5, 2015**
U.S. POSTAL SERVICE, POST OFFICE, Glenshaw, 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
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 2, 2015 appellant timely appealed the January 21, 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 the claim.[2]

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on December 1, 2014.

[1] 5 U.S.C. §§ 8101-8193 (2006).

[2] The record on appeal contains evidence received after OWCP issued its January 21, 2015 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP issued its final decision. 20 C.F.R. § 501.2(c)(1) (2014).

FACTUAL HISTORY

Appellant, a 51-year-old assistant city carrier, filed a traumatic injury claim (Form CA-1) on December 2, 2014. He claimed that he injured his neck and shoulders in a work-related motor vehicle accident the previous afternoon.

On December 1, 2014 at 2:50 p.m. appellant was rear-ended while making a left-hand turn. He stated that the other driver could not stop in time. Appellant's postmaster, Janet Michulko, completed the supervisor's report on Form CA-1 stating that appellant was in the performance of duty when the injury/incident occurred. She reported that the injury was caused by a third party and provided the name and address of the responsible third party. Ms. Michulko confirmed that appellant received medical care on December 1, 2014 at the University of Pittsburgh Medical Center (UPMC) emergency room (ER) and noted that her knowledge of the injury was consistent with the employee's statement and/or witness statements.

Along with the claim form, OWCP received discharge instructions from UPMC, which noted that appellant was admitted on December 1, 2014 at 3:35 p.m. Appellant was seen by Dr. Bradley S. Hiles. His medical condition was noted as "[c]ervical [s]train; MVA [motor vehicle administration] restrained driver." Chest and cervical spine x-rays were obtained, but the results were unavailable. Appellant was given Ibuprofen and he received a prescription for pain medication (Norco). The UPMC discharge instructions also included general information about motor vehicle collisions and the diagnosis and treatment of cervical sprain.

In a letter dated December 12, 2014, OWCP advised appellant that the December 1, 2014 UPMC discharge instructions were insufficient to support his claim. It specifically noted that there was no physician's opinion that included a diagnosis of any condition resulting from appellant's injury. OWCP also requested additional information to substantiate the factual elements of appellant's claim such as how the accident occurred, the immediate effects of the injury, and what he did shortly thereafter. It afforded appellant 30 days to submit the requested information.

In a separate letter also dated December 12, 2014, OWCP advised appellant of his rights and responsibilities under FECA regarding a third-party recovery.

OWCP subsequently received an emergency medical service (EMS) report regarding appellant's December 1, 2014 "[t]raffic [a]ccident." The report indicated, among other things, that appellant was transported by ambulance from Mount Royal Boulevard and W. Pennview to UPMC -- Passavant.

In a January 21, 2015 decision, OWCP denied appellant's claim because he failed to establish fact of injury. It explained that it had previously advised him that the UPMC discharge instructions would not suffice, but he failed to submit additional medical evidence in response to the December 12, 2014 claim development letter. OWCP also found that the record did not support that the December 1, 2014 incident occurred as alleged. According to the claims

examiner, appellant did not respond to OWCP's request for additional information, and therefore, the factual elements of the claim could not be substantiated.[3]

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[4]

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[5] The second component is whether the employment incident caused a personal injury.[6] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[7]

ANALYSIS

OWCP denied appellant's traumatic injury claim on the basis that he failed to establish that the December 1, 2014 incident occurred as alleged. It also found that there was no evidence of a medical diagnosis in connection with the alleged December 1, 2014 motor vehicle accident. The Board finds that the record supports that appellant was involved in an employment-related motor vehicle accident on December 1, 2014. However, the record before the Board does not establish a medical diagnosis in connection with his work-related motor vehicle accident.

With respect to the December 1, 2014 incident, appellant reported that he was rear-ended by another motorist while making a left-hand turn. According to the Form CA-1, the accident occurred at 2:50 p.m. at the intersection of Mount Royal Boulevard and W. Pennview. The Board notes that the employing establishment did not challenge appellant's statement regarding

[3] The January 21, 2015 decision did not reference the December 1, 2014 EMS report, which OWCP received the previous day; January 20, 2015.

[4] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

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

[6] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[7] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

the December 1, 2014 motor vehicle accident. Moreover, the December 1, 2014 EMS report documents that appellant was involved in a rear-end collision as alleged. At 2:53 p.m., the EMS crew was dispatched to Mount Royal Boulevard/W. Pennview St. for a motor vehicle accident. When they arrived at 2:57 p.m., appellant was found sitting upright in his vehicle, conscious and alert, and in no apparent distress. The police were reportedly also on the scene. Appellant's chief complaint was head and neck pain. The EMS report further noted that appellant was in the driver's seat (right side) of a postal vehicle "with moderate damage to the rear-end." Appellant informed the EMS crew member that he was "restrained" and when his vehicle was struck, appellant's head went forward, then "snapped" back. He described his head pain as "throbbing." The EMS crew treated him at the scene for approximately 20 minutes, and then transported appellant to UPMC ER where they arrived at 3:32 p.m.

Based on the foregoing information, the Board finds that appellant established that he was involved in a work-related motor vehicle accident on December 1, 2014. The Board will modify OWCP's January 21, 2015 decision to reflect this finding, but while the evidence establishes that the December 1, 2014 employment incident occurred as alleged, the record lacks medical evidence of a diagnosis in connection with appellant's motor vehicle accident.

As OWCP previously advised, the December 1, 2014 UPMC discharge instructions referenced "[c]ervical [s]train" and "MVA." However, there is no description of the December 1, 2014 incident/injury or physical findings that might support an injury-related diagnosis. OWCP afforded appellant the opportunity to submit additional medical evidence, but he did not respond in a timely fashion. The record has since been supplemented; however, the Board cannot consider additional evidence for the first time on appeal.[8]

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

Appellant established that he was involved in an employment-related motor vehicle accident on December 1, 2014. However, the evidence fails to establish a medical diagnosis in connection with the December 1, 2014 employment incident.

[8] *See supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2015 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: October 5, 2015
Washington, DC

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

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

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