

**United States Department of Labor
Employees' Compensation Appeals Board**

R.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Scottsboro, AL, Employer**

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**Docket No. 15-1369
Issued: September 8, 2015**

Appearances:
Martin Kaplan, Esq., for the appellant
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 4, 2015 appellant, through counsel, filed a timely appeal from a May 22, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 March 15, 2014.

FACTUAL HISTORY

On March 24, 2014 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 15, 2014 he sustained an injury to his upper right arm. He described the cause of injury as possibly loading trays or closing the vehicle door.

¹ 5 U.S.C. § 8101 *et seq.*

Appellant stated that constant repetitive motion intensified the pain.² He did not stop work at the time of the alleged injury.

In a report dated March 17, 2014, Dr. Anthony Sims, a Board-certified family practitioner, noted that appellant reported neck and shoulder pain with a gradual onset of symptoms. Appellant reported that it was job related but “not being accident related.” By form report (Form CA-20) dated March 18, 2014, Dr. Sims diagnosed back pain and cervicalgia. He checked a box “yes” that the diagnosed conditions were “aggravated by job duties.” In a report dated March 24, 2014, Dr. Sims again diagnosed back pain and cervicalgia.

Dr. Sims referred appellant to Dr. Curt Freudenberger, a Board-certified orthopedic surgeon. In a report dated April 2, 2014, Dr. Freudenberger provided a history that appellant had chronic neck pain 10 years earlier and had two cervical surgeries.³ He stated that appellant was seen for neck pain with recent onset on March 15, 2014. The history states that on March 15, 2014 appellant “was working at a task that required a lot of twisting” and he had an acute onset of right upper extremity pain, and pain in the right L4 distribution. Dr. Freudenberger provided results on examination and discussed the results of diagnostic testing. He reported x-rays taken that date showed fusions at C5-6 and C6-7, with advanced stenosis at C6-7. Dr. Freudenberger also noted that thoracic spine x-rays showed degenerative changes, and lumbar x-rays showed right L4-5 facet hypertrophy. He diagnosed cervical spondylosis, cervical neural foraminal stenosis, lumbar spondylosis, and cervical radiculopathy. In the addendum statement, Dr. Freudenberger stated that appellant reported a substantial increase in neck pain beginning March 15, 2014. He indicated that appellant had pain radiating into both the right arm and right leg, and appellant should continue physical therapy and work sedentary duty.

In a report dated April 21, 2014, Dr. Freudenberger provided results on examination and indicated that a magnetic resonance imaging (MRI) scan showed C6-7 stenosis. He recommended C6-7 surgery.

By letter dated July 11, 2014, OWCP requested additional factual and medical evidence with respect to the claim. It asked appellant to provide a detailed description as to how the injury occurred, and noted that it was not clear whether he was claiming a traumatic injury (from one workday) or an occupational claim (more than one workday). In addition, appellant was advised to submit medical evidence.

In an undated statement received on July 27, 2014, appellant stated that he had two prior neck surgeries and these surgeries and subsequent treatment were related to constant repetitive motion of his job duties, including, standing, walking, driving, twisting, reaching, and lifting. He stated that on March 15, 2014 while delivering his route his usual neck and back pain increased and progressed into his right arm and leg. Appellant indicated that he had returned to modified

² The record indicates that appellant has filed additional claims for injury to his neck. Appellant filed a traumatic injury claim for a neck injury on June 7, 2014. He filed an occupational disease claim (Form CA-2) dated September 23, 2014 alleging that his job duties had contributed to a neck condition, including prior cervical disc fusion surgeries.

³ The report was prepared by a physician assistant, but includes an addendum statement and signature by Dr. Freudenberger.

work on April 3, 2014. According to appellant, he had another injury on June 7, 2014 when he bent over a hamper and was struck in the forehead with a small parcel thrown by a coworker, causing increased pain to the neck, shoulder and arm.⁴ Appellant stated that he had not worked in over a month. He also asserted that the July 11, 2014 letter from OWCP did not include an attached questionnaire regarding the injury.

Appellant submitted an August 7, 2014 report from Dr. Sims, stating that appellant was treated on March 24 and May 5, 2014 for a neck injury on March 15, 2014. Dr. Sims stated that appellant's preexisting condition had been aggravated by job duties, with repetitive twisting, lifting, and overhead work.

By decision dated August 14, 2014, OWCP denied the claim for compensation. It found appellant had not submitted sufficient factual information to establish that an incident occurred as alleged. In addition, OWCP found the medical evidence was insufficient.

Appellant, through counsel, requested a hearing before an OWCP hearing representative. He submitted a September 22, 2014 report from Dr. Freudenberger, who stated that the date of injury was March 15, 2014 and referred to his April 2, 2014 report. Counsel stated that appellant had reported an increased pain radiating into the arms and the right arm radiculopathy was consistent with C7 nerve root radiculopathy. On October 7, 2014 appellant submitted an undated statement that again explained he had increased pain on March 15, 2014 while delivering mail. He stated that the severity of the pain and the symptoms involving the right side of his body prompted him to seek treatment on March 17, 2014.

A hearing was held on March 18, 2015. Appellant stated that he had been working for the past nine months in a "temporary management job" at the employing establishment. According to counsel, on March 15, 2014 appellant was assigned different duties that involved more lifting and bending. He stated that it was not a specific incident but the "totality of that day." Appellant stated that he had to case two routes on March 15, 2014, and there was heavy mail volume and parcel delivery.

With respect to additional medical evidence, appellant submitted reports dated March 16 and April 6, 2015 from Dr. Alan Elliot, a Board-certified internist, who indicated that appellant was seen for evaluation of myalgias and arthralgias, related to muscle pain and spasms for the prior 20 years.

By decision dated May 22, 2015, the hearing representative affirmed the denial of the claim. He indicated that appellant had established an incident on March 15, 2014, but the medical evidence was insufficient to establish the claim for compensation.

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."⁵ The

⁴ As noted above, appellant filed a traumatic injury claim for injury on June 7, 2014.

⁵ 5 U.S.C. § 8102(a).

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.”⁶ An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.⁷ 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.⁸

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.⁹ 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.¹⁰

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 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.¹¹

ANALYSIS

In the present case, appellant submitted a traumatic injury claim alleging an injury on March 15, 2014. The Board notes that, while appellant had referred to general job duties performed over a long period, he also filed an occupational disease or illness claim on September 23, 2014.¹² That claim is not before the Board on this appeal. The claim in this case is for a traumatic injury resulting from work duties performed on March 15, 2014.

⁶ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁷ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁸ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013).

¹⁰ *Id.* at Chapter 2.805.3(d) (January 2013).

¹¹ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

¹² A traumatic injury is an injury caused by an incident or incidents within one workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease or illness is a condition produced by the work environment over more than one workday or shift. 20 C.F.R. § 10.5(q).

Appellant alleged that on March 15, 2014 he delivered mail and was engaged in activity that including lifting, bending, and casing mail. He indicated that mail volume was heavy and he had to case two routes. The hearing representative accepted that the alleged employment activity occurred on March 15, 2014. The issue is whether there was sufficient medical evidence to establish a diagnosed condition causally related to the employment activity.

The Board finds the evidence of record does not contain a rationalized medical opinion on the issue presented. Appellant was treated by Dr. Sims on March 17, 2014 but he did not provide an accurate history of the March 15, 2014 employment incident. Dr. Sims reported a gradual onset of symptoms, and stated there was no accident involved. In the March 18, 2014 CA-20 form report, as well as the brief August 7, 2014 report, he referred to aggravation by job duties. As noted, the occupational disease claim is not before the Board on this appeal.

In the April 2, 2014 report, Dr. Freudenberger provides a history of a lot of twisting on March 15, 2014, without further explanation. He does not discuss the specific job duties alleged by appellant, or otherwise provide a complete and accurate factual history. Moreover, Dr. Freudenberger does not provide a rationalized medical opinion. He diagnosed cervical spondylosis, cervical neural foraminal stenosis, lumbar spondylosis, and cervical radiculopathy. Dr. Freudenberger stated that appellant had increased symptoms on March 15, 2014, without explaining how the job duties on March 15, 2014 contributed to a diagnosed condition. Medical rationale is a medically sound explanation for the opinion offered.¹³ Dr. Freudenberger does not provide a medically sound explanation on causal relationship between a diagnosed condition and work incidents on March 15, 2014.

The September 22, 2014 report from Dr. Freudenberger refers to the April 2, 2014 report without providing additional relevant evidence on the issue presented. Dr. Elliot did not provide a complete history or a rationalized opinion on the relevant medical issue in his March 16 and April 6, 2015 reports.

The Board finds that appellant did not meet his burden of proof in this case. The record does not contain a medical report with a complete and accurate history and a medical opinion, supported by sound medical reasoning, on causal relationship between a diagnosed condition and the March 15, 2014 work incident.

On appeal, appellant's counsel states that Dr. Freudenberger's report is sufficient to establish causal relationship. For the reasons discussed, the Board finds Dr. Freudenberger's reports are not sufficient to meet appellant's 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.

¹³ See *Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound and logical).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury in the performance of duty on March 15, 2014.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 22, 2015 is affirmed.

Issued: September 8, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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