

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

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N.L., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Merrifield, VA, Employer )

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**Docket No. 15-1097  
Issued: August 11, 2016**

*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  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On April 17, 2015 appellant filed a timely appeal from a March 31, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met his burden of proof to establish an injury in the performance of duty on January 31, 2015.

**FACTUAL HISTORY**

On February 4, 2015 appellant, then a 67-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 31, 2015 his right leg prosthesis broke in the performance of duty. He stated that it broke at 8:30 while he brought "DPS of R87" at work.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

In a report dated February 3, 2015, Dr. Zhen Xu, Board-certified in physical medicine and rehabilitation, stated that appellant obtained his current prosthesis 15 years ago, that it was broken, and he would need a new prosthesis.

By letter dated February 5, 2015, the employing establishment controverted continuation of pay and challenged appellant's claim on the basis that he had not provided *prima facie* medical evidence to support the claim that he sustained a traumatic injury. It stated, "[appellant] was walking to get a tray of mail and his artificial leg broke. [The employing establishment] is not disputing the fact that [his] artificial leg broke while he was at work, however we are challenging the fact that he is claiming this as a work-related traumatic injury."

In an attending physician's report dated February 12, 2015, Dr. Antonio Usman, a Board-certified internist, stated that appellant had a broken leg prosthesis and that it had a loose screw. He gave appellant crutches and stated that appellant could return to work.

By letter dated February 26, 2015, OWCP informed appellant of the evidence needed to establish his claim.

On January 31, 2015 Dr. Usman stated that appellant reported his artificial leg broke at work on that date. Appellant reported to Dr. Usman that he was performing his normal duties at work and carrying a tray of mail when his artificial foot made a clunking sound and detached from the artificial lower leg.

In a duty status report dated January 31, 2015, Dr. Usman noted that appellant could sit, engage in simple grasping and fine manipulation, reach above the shoulder, and operate machinery for up to eight hours per day. He recommended that appellant not perform any other physical tasks at work until his prosthesis was fixed.

On March 9, 2015 appellant responded to OWCP's questionnaire. He stated that on January 31, 2015 at 8:30 a.m. he brought a tray of "R87 DPS" mixed in with his "PPS (R97)" when his artificial leg was broken. Appellant stated, "I was not injured." He noted that his artificial leg was made in the U.S. and he had worn it for 15 years. Appellant stated, "I had been using this artificial leg for more than 15 years in [the employing establishment] as the rural carrier. I did not know what caused it to break." Explaining why he believed his claim was work related, appellant noted, "My artificial leg was broken when I did my job at workplace, Vienna post office. I had been using it [for] 15 years in my job, rural carrier. I did not have any problem until it was broken on 1/31/15. I only replaced the belt two times and the remaining hadn't been touched yet. I cannot do my job without my artificial leg." Appellant further noted, "I did not get any injury. I am waiting for my new leg. Therefore I am using my sick leave." He attached two photographs of his broken artificial leg.

By decision dated March 31, 2015, OWCP denied appellant's claim for compensation. It noted that he had not submitted sufficient evidence to establish that his artificial leg broke at work or due to work, or that he was injured.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>2</sup> 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 timely filed within the applicable time limitation period of FECA, that an injury<sup>3</sup> was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>5</sup>

With respect to the first component of fact of injury, the employee has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.<sup>6</sup> An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee’s statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>7</sup> An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>8</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee’s statements in determining whether a *prima facie* case has been established.<sup>9</sup> However, an employee’s

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> OWCP’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

<sup>4</sup> *T.H.*, 59 ECAB 388, 393 (2008); see *Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Id.* See *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

<sup>6</sup> *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

<sup>7</sup> *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

<sup>8</sup> *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>9</sup> *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>10</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>11</sup>

### ANALYSIS

The Board finds that appellant met his burden of proof to establish an employment incident on January 31, 2015. Appellant sufficiently described the time, place, and nature of injury to establish that the employment incident actually occurred, and responded to OWCP's inquiries regarding a more specific description of the event. He noted that he was carrying a tray of mail at the employing establishment when his right leg prosthesis broke. Moreover, the employing establishment stated, "The [employing establishment] is not disputing the fact that [appellant's] artificial leg broke while he was at work, however we are challenging the fact that he is claiming this as a work-related traumatic injury."

FECA specifically defines an injury to include "damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired, and such time lost while such device or appliance is being replaced or repaired."<sup>12</sup> There is no evidence of record disputing appellant's account of events on January 31, 2015. Hence, appellant has met his burden of proof to establish the factual component of fact of injury.

The Board further finds that appellant has established the presence of the condition for which compensation is claimed, that of a broken right leg prosthesis. Appellant's physicians, including Drs. Xu and Usman, assessed or diagnosed him with a broken right leg prosthesis and recommended repair or replacement. As these assessments are related to the member for which appellant claimed compensation, appellant has met his burden of proof to establish the existence of the claimed condition.

The Board finds, however, that appellant has failed to establish that his right leg prosthesis broke as a result of an incident on January 31, 2015. Appellant himself stated, "I had been using this artificial leg for more than 15 years in [the employing establishment] as the rural carrier. I did not know what caused it to break." He did not submit evidence from a physician

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<sup>10</sup> *D.B.*, 58 ECAB 464, 466-67 (2007); *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

<sup>11</sup> *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>12</sup> 5 U.S.C. § 8101(5).

containing a rationalized opinion as to the cause of his leg prosthesis's breakage. The evidence of record indicates only that the prosthesis broke after 15 years of use while appellant was at work. As such, appellant has not met his burden of proof to establish a causal relationship between the incident of January 31, 2015 and his condition.

The Board finds that there is insufficient rationalized probative medical evidence of record to establish that appellant's prosthesis was damaged due to his employment factors.

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 a traumatic injury in the performance of duty on January 31, 2015.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 31, 2015 is affirmed, as modified.

Issued: August 11, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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