United States Department of Labor
Employees' Compensation Appeals Board

P.L., Appellant	)	
and	)	**Docket No. 16-0612**
	)	**Issued: June 1, 2016**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PATROL, Washington, DC, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On February 1, 2016 appellant filed a timely appeal from an October 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 this case.[2]

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted new medical evidence with his appeal and additional evidence after OWCP rendered its October 21, 2015 decision. The Board's jurisdiction however is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On January 14, 2015 appellant, then a 41-year-old customs and border patrol representative, filed a traumatic injury claim alleging that on January 9, 2015 he sustained a left arm double fracture when his left arm was jammed between his vehicle and a cement pole. He alleged that as he was parking his government issued vehicle, he exited to retract the mirrors when the vehicle reversed and crushed his arm against a cement pillar. On January 9, 2015 the employing establishment authorized medical treatment. Appellant stopped work on January 9, 2015 and was released to light duty on April 9, 2015. The employing establishment advised that appellant was in the performance of duty at the time of the incident.

By letter dated February 17, 2015, OWCP informed appellant of the type of evidence needed to establish his claim. Appellant was advised that he had 30 days to submit responsive evidence.

In a March 6, 2014 response to an OWCP questionnaire, appellant advised that as he was attempting to park his government issued vehicle, he exited the vehicle to retract the mirrors. He explained that due to the size of the vehicle he had to retract the mirrors to fit it in the parking space. Appellant alleged that he positioned the vehicle, placed the transmission in park, and exited the vehicle. While retracting the mirror, the vehicle began to reverse and crushed his arm against a cement pillar. Appellant stated that he was in unbearable pain and dropped to the floor until emergency medical services (EMS) arrived to take him to a hospital. His wrist was broken and he underwent emergency surgery the following day.

In February 3, March 2, and 6, 2015 attending physician's reports (Form CA-20), Dr. Guillermo Garcia Felix, an orthopedic specialist, advised that appellant had sustained a severe left distal humerus fracture. X-rays revealed good alignment of the fracture but appellant's movements were limited. Dr. Felix noted that appellant had undergone osteosynthesis with plates and screws to treat his condition and advised that he was unable to work until April 9, 2015. He checked the box marked "yes" to indicate that his condition was caused or aggravated by his employment and specifically attributed the injury to his duties as a driver.

By decision dated March 31, 2015, OWCP denied appellant's claim for the medical component of fact of injury. It found the medical evidence of record insufficient to establish a diagnosed medical condition in connection with the claimed event.

On April 16, 2015 appellant requested review of the written record. Multiple medical bills were submitted. An x-ray and picture of a surgical scar was submitted.

A January 27, 2015 report from Dr. Felix, written in Spanish, was submitted along with January 20 and February 3, 2015 prescriptions, also written in Spanish.

In an April1 15, 2016 e-mail, appellant indicated that Dr. Felix advised that appellant was able to return to work and authorized to drive. He also noted that Dr. Felix had prescribed physical therapy.

In a September 24, 2015 attending physician's report Form (CA-20), Dr. Felix found excellent alignment in the x-ray and noted that appellant had recovered 90 percent of elbow extension.

By decision dated October 21, 2015, an OWCP hearing representative affirmed the prior decision. She found that appellant had failed to submit a rationalized medical opinion explaining how the diagnosed condition was related to the January 9, 2015 incident.

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 he sustained an injury in the performance of duty as alleged and that his 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 he 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

The Board finds that this case is not in posture for a decision.

Appellant alleged that he sustained a left arm fracture in the performance of duty. After the initial March 31, 2015 denial of his claim, appellant submitted a January 27, 2015 report from Dr. Felix, which was written in Spanish. There is no English translation of the report in the record. In the October 21, 2015 decision, OWCP acknowledged that some reports were not in English. It noted that there was a careful review of the evidence of record, but did not specifically

[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).

address the report written in Spanish from Dr. Felix. Although not all documents submitted to OWCP require translation[8] where a medical report in a foreign language is received by OWCP, an accurate, unbiased translation of the report is necessary. For OWCP and the Board to consider all medical evidence of record, an accurate translation of Dr. Felix's report is needed. OWCP must base its decision on a complete analysis of the medical evidence. As OWCP did not seek a translation of the medical evidence included in the record and as there is no other indication that the report was evaluated, the case will be remanded to OWCP for this purpose.[9]

CONCLUSION

The Board finds that this case is not in posture for a decision as the record does not establish that OWCP reviewed all of the relevant evidence in this case. The Board therefore remands the case for OWCP to obtain a translation of Dr. Felix's January 27, 2015 medical report and issue an appropriate final decision.

ORDER

IT IS HEREBY ORDERED THAT the October 21, 2015 decision of the Office of Workers' Compensation Programs is set aside and remanded for further proceedings consistent with this decision of the Board.

Issued: June 1, 2016
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

[8] *M.O.*, Docket No. 15-1423 (issued April 12, 2016).

[9] *Ana D. Pizarro*, 54 ECAB 430, 434 (2003) (the Board remanded the case in order to seek an accurate translation). *See also A.G.*, Docket No. 08-206 (issued May 12, 2008).