United States Department of Labor
Employees' Compensation Appeals Board

C.V., Appellant	)	
and	)	**Docket No. 15-0615**
	)	**Issued: September 13, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Hartford, CT, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 26, 2015 appellant filed a timely appeal from a January 13, 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 on October 8, 2014.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence following the January 13, 2015 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On October 10, 2014 appellant, then a 44-year-old mail handler, filed a traumatic injury claim alleging that on October 8, 2014 he sustained unknown injuries when he blacked out and hit a pole on the platform while driving a forklift. He stopped work and returned to full duty on November 24, 2014.

In an October 12, 2014 attending physician's report, a physician with an illegible signature, stated that appellant blacked out and ran his forklift into something. He reported findings of rapidly fluctuating right-sided weakness that did not localize on physical examination and anxiety. The physician checked a box marked "No" that appellant's condition was caused or aggravated by the described employment activity and explained that there were multiple sources of stress. He recommended appellant see a psychiatrist and noted that appellant was unable to work.

In an October 12, 2014 duty status report, an internist with an illegible signature, noted that appellant was a mail handler and diagnosed anxiety disorder. He indicated that appellant could return to work when cleared by her psychiatrist and therapist.

In duty status reports dated October 24 and 31, 2014, a psychiatrist with an illegible signature, noted that on October 8, 2014 appellant passed out while driving a forklift and experienced a lot of pain. He reported that appellant had decreased functioning, was unable to sleep, and experienced increased anxiety and migraines. The physician recommended that appellant follow-up with a neurologist and not return to work.

By letter dated October 28, 2014, the employing establishment controverted appellant's claim alleging that he did not provide any rationalized medical opinion evidence which supported a causal relationship between his unknown injuries and his federal employment.

In a letter dated December 12, 2014, OWCP informed appellant that the information submitted was insufficient to establish that the incident had occurred as alleged or that he had sustained an injury as a result of the claimed event. It advised him to provide a detailed description of how the alleged injury occurred, including the immediate effects of the incident and what he did immediately thereafter, and any statements from persons who witnessed or had immediate knowledge of the circumstances surrounding the claimed incident. OWCP also advised appellant to submit a detailed report from his treating physician which included a history of how the claimed injury occurred, a diagnosis, and an opinion on how the condition was causally related to the alleged injury.

Appellant submitted various hospital records dated October 9, 2014. In October 9, 2014 emergency room records, Dr. Catherine C. Pettit, Board-certified in emergency medicine, noted that appellant arrived at the emergency room with complaints of having a syncopal event following a motor vehicle accident -- forklift into wall. She related that appellant remembered hitting a pole and found himself sitting on the ground after the event. Dr. Pettit noted that appellant may have had a second syncopal event with emergency medical services (EMS). Appellant denied any dizziness, chest pain, or weakness before the event. Upon examination, Dr. Pettit observed no chest pain or shortness of breath. She reported that he was positive for

syncope with weakness and right-sided facial droop. Dr. Pettit diagnosed weakness and syncope. Appellant was discharged from the hospital on October 12, 2014.

In an October 9, 2014 magnetic resonance imaging (MRI) scan, Dr. Muhib A. Khan, a Board-certified neurologist, observed normal caliber and contour of the brain and no aneurysm. A neck MRI scan also noted no evidence of arterial stenosis or occlusion. Vascular caliber and contour were within normal limits. Dr. Khan concluded that appellant had a normal MRI scan of the brain and neck.

In an October 9, 2014 computerized tomography (CT) report, Dr. Khan related that appellant had a headache with syncopal two hours ago with right-sided weakness. He reported normal noncontrast CT of the head, face, and spine.

In a January 5, 2015 report, signed by Nicole Flanagan, a nurse, and a physician with an illegible signature,[3] related that appellant was referred to her after admission to the hospital for a question of a stroke or transient ischemic attack after "blacking out" at work and driving a forklift into a large pole. Appellant stated that he had stabbing pain in the occipital posterior region of his head that would wax and wane as well as very elevated blood pressure, some facial dropping, visual field deficits, and right-sided weakness with decrease sensation to touch in his lower extremity, stuttering, and altered mental status. Ms. Flanagan noted that appellant underwent several tests at the hospital, which all showed no abnormalities other than a slight elevation of his alanine transaminase and aspartate transaminase, most likely related to muscle trauma. She reported that appellant was diagnosed with syncope, a complex migraine, conversion disorder or anxiety related to recent elevations in stress and referred to outpatient psychiatric provider for follow-up. Ms. Flanagan stated that appellant had been treated in their office since October 2014 for diagnosis of circadian rhythm sleep-wake disorder. She noted that they discussed the challenges of working the night shift and his difficulty with normalizing his sleep schedule. Ms. Flanagan advised appellant to pursue day work and focus on sleeping better during the day so he is sufficiently rested at night.

In a decision dated January 13, 2015, OWCP denied appellant's claim finding insufficient evidence to establish fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence,[5] including that he is an "employee" within the meaning of FECA[6] and that he filed his claim

[3] The Board notes that, although there is a name printed underneath the signature, the name is obscured and difficult to read.

[4] 5 U.S.C. §§ 8101-8193.

[5] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[6] *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercardo)*, 4 ECAB 357, 359 (1951).

within the applicable time limitation.[7] The employee must also establish that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[8]

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.[9] There are two components involved in establishing the 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.[10] Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.[11]

An 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. 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, as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.[12] An employee has not met his burden of proof 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. 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 statement in determining whether a *prima facie* case has been established. An employee's 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.[13]

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[14] To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[15]

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[7] *R.C.*, 59 ECAB 42 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954).

[8] *G.T.*, 59 ECAB 447 (2008); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

[9] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[10] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

[11] *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

[12] *Joseph H. Surgener*, 42 ECAB 541, 547 (1991); *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

[13] *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

[14] *J.Z.*, 58 ECAB 529 (2007).

[15] *Michael E. Smith*, 50 ECAB 313 (1999).

ANALYSIS

Appellant alleged that on October 8, 2014 he sustained unknown injuries when he blacked out and hit a pole while driving a forklift at work. He was transported *via* EMS and was treated at the emergency room. OWCP denied appellant's claim finding insufficient evidence to establish that the alleged event occurred as described.

The Board finds that the evidence does not contain any inconsistencies sufficient to cast doubt on whether an incident occurred on October 8, 2014. The record reveals that appellant was transported *via* EMS and sought treatment in the emergency room immediately after the incident where he provided a consistent history of injury that he passed out and hit a pole while operating a forklift at work. He also submitted a claim for a traumatic injury just two days after the incident. As previously stated, an employee's statement regarding the occurrence of an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.[16] Although appellant did not respond to OWCP's December 12, 2014 request for a more detailed description of the alleged incident, the Board notes that there is no strong evidence contradicting appellant's initial statement regarding how the incident occurred. The employing establishment did not dispute that the October 8, 2014 incident occurred as described. The medical reports subsequent to October 8, 2014 contain a history of injury generally consistent with appellant's description of the incident and there is no factual evidence indicating that the claimed incident did not occur as alleged.[17] Under the circumstances of this case, the Board finds that appellant's allegations have not been refuted by strong or persuasive evidence and there are insufficient inconsistencies to cast serious doubt on whether an incident occurred.[18]

Consequently, appellant has established the occurrence of the October 8, 2014 work incident.

As OWCP has not yet evaluated the medical evidence, the case will be remanded to OWCP for evaluation of the medical evidence to determine whether he sustained a medical condition and/or disability due to the October 8, 2014 work incident. After such further development deemed necessary, OWCP shall issue an appropriate decision.[19]

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.

[16] *Supra* note 12.

[17] *See Thelma Rogers*, 42 ECAB 866 (1991).

[18] *R.W.*, Docket No. 14-1816 (issued February 9, 2015); *D.B.*, Docket No. 14-924 (issued November 3, 2014).

[19] *L.S.*, Docket No. 13-1742 (issued August 7, 2014).

CONCLUSION

The Board finds this case not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this opinion of the Board.

Issued: September 13, 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