United States Department of Labor
Employees' Compensation Appeals Board

E.W., Appellant	)	
and	)	**Docket No. 17-0069**
	)	**Issued: May 23, 2017**
DEPARTMENT OF VETERANS AFFAIRS, DAYTON VETERANS MEDICAL CENTER, Dayton, OH, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 17, 2016 appellant filed a timely appeal of a June 28, 2016 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.

ISSUE

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

FACTUAL HISTORY

On May 16, 2016 appellant, then a 70-year-old part-time housekeeping aid, filed a traumatic injury claim (Form CA-1), alleging that, during a fire drill, on February 10, 2016 a

[1] 5 U.S.C. § 8101 *et seq.*

nurse pushed his housekeeping cart out of the hallway and it ran over his feet. He also indicated that his fingers and thumb were smashed into the glass door. Appellant experienced swelling of the bilateral feet, left hand, fingers, and thumb. He returned to regular duty on February 24, 2016, but stopped work on March 2, 2016. The employing establishment indicated that appellant was in the performance of duty when the claimed injury occurred.

By letter dated May 19, 2016, OWCP advised appellant of the type of medical and factual evidence needed to establish his claim, particularly requesting that appellant submit a physician's reasoned opinion addressing the relationship between his claimed condition and the employment incident. It also requested that appellant further describe how his claimed injury occurred. In a letter of the same date, OWCP requested that the employing establishment comment.

In a February 24, 2016 on-the-job injury and illness report, appellant indicated that on February 10, 2016, while he was cleaning a room on 3D--South, a code red was alerted. Before he could return his mop to the bucket, one of the nurses shoved his housekeeping cart back with great force, causing the wheels to run over his feet. He reported swelling of his feet.

A February 24, 2016 employing establishment medical record from Dr. William D. Gould, Board-certified in emergency medicine, indicated that on February 17, 2016 appellant reported mopping a patient's room when a fire alarm went off. Appellant noted that, as he entered the hallway, someone pushed his cleaning cart, which ran over the top of his feet. He noticed swelling extended all the way up to his knee. Dr. Gould noted physical findings of scaly and ashy colored feet and left lateral ankle swelling. He diagnosed possible contusion to the top of both feet. Dr. Gould returned appellant to full duty that day without restrictions. On March 2, 2016 he noted that appellant complained of pain over the dorsal of his feet caused by a cart rolling over his feet on February 17, 2016. Dr. Gould noted pain and edema in appellant's legs, hoarseness, shortness of breath, blood in his mucous, no swelling over the dorsum of the feet, and palpable tenderness over the feet. He diagnosed residual discomfort of the feet, shortness of breath, and possible pneumonia. Dr. Gould took appellant off duty. A March 2, 2016 x-ray of the feet revealed no acute fracture in either foot, but bipartite configuration of the hallux and tibial sesamoid bilaterally, which could represent a congenital etiology rather than an unincorporated old fracture, and small bilateral calcaneal enthesophytes.

In notes dated March 8 and 14, 2016, Dr. Gould indicated speaking with appellant by telephone who reported coughing, blood in his mucous, and swelling of his left arm. On April 7, 2016 he noted treating appellant in follow up after he had been discharged from a hospital on April 5, 2016 for treatment of left arm deep vein thrombosis (DVT). On May 19, 2016 Dr. Gould noted findings that included no palpable edema over the feet, no palpable pain over dorsum of the feet where the cart rolled over them, no pain while walking, and no gait abnormality. Diagnoses included status post on-the-job injury February 10, 2016 and residual left arm swelling from DVT. Dr. Gould indicated that there appeared to be no problem with appellant's feet from the previous injury of February 10, 2016. That injury was resolved, and was not related to the DVT hospitalization.

The employing establishment submitted a January 13, 2016 report from Dr. Vaskar Mukerji, a Board-certified cardiologist, who performed a right and left heart catheterization and

a coronary angiography. In a discharge summary dated January 14, 2016, Dr. Ashish Mahajan, a Board-certified internist, noted that appellant was admitted from January 13 to 14, 2016 with a principal discharge diagnosis of single vessel coronary artery disease (CAD), severe cardiomyopathy and pulmonary hypertension.

In a March 29, 2016 report, Dr. Rebecca Tobias, a Board-certified internist, noted that appellant presented with left arm swelling and was found to have acute DVT and mild chronic heart failure. In a March 30, 2016 report, she noted continued left arm swelling. Appellant reported being injured at work when something ran over his left lower extremity and arm. He was hospitalized and diagnosed with acute upper extremity DVT. Dr. Tobias' diagnoses included diagnosed acute upper extremity DVT, possibly provoked given recent history of injury to his arm and leg, and left leg swelling with recent injury. In an April 4, 2016 discharge summary, she noted that appellant was admitted from March 29 to April 4, 2016 for left upper extremity swelling. Appellant reported injuries to his feet on February 17, 2016 when a cart at work ran into him. Dr. Tobias noted cardiovascular and pulmonary diagnoses.

A March 29, 2016 report from Dr. Garietta N. Falls, a Board-certified vascular surgeon, noted appellant's cardiovascular treatment. Appellant reported doing well until March 17, 2016 when his feet were run over by a work cart and he developed left upper extremity swelling. Dr. Falls noted findings relative to appellant's DVT. She diagnosed past medical history of hypertension, chronic heart failure, recent onset of left upper extremity swelling, and unprovoked DVT of the left upper extremity.

In an April 13, 2016 e-mail, an employing establishment human resources specialist, requested information from Dr. Tobias on appellant's treatment. On April 13, 2016 Dr. Tobias indicated that she had not treated appellant for a work injury. She noted treating appellant for a new arm swelling a couple of weeks earlier. Dr. Tobias diagnosed left arm DVT. She indicated that she initially considered that the prior injury may have been a risk factor for developing a DVT, but a consulting hematologist did not feel that the DVT in the arm could have been related to an injury that occurred almost two months prior. Appellant was diagnosed with unprovoked left arm DVT.

On April 25, 2016 Dr. Perry G. Nystrom, a Board-certified anesthesiologist and internist, treated appellant in follow up for chronic obstructive pulmonary disease (COPD) and hemoptysis during an inpatient stay for left arm DVT in March 2016. He noted appellant's cardiovascular and pulmonary findings and diagnoses.

On May 16, 2016 Ms. Mohamed requested that the employing establishment provide a fire drill roster. The employing establishment's safety service provided a February 10, 2016 fire drill log which indicated that on February 10, 2016 a fire drill was conducted in building 330 at 1700 hours. The fire alarm and drill participation log was signed by appellant.

The employing establishment submitted an incident report dated May 17, 2016 signed by appellant's supervisor, who noted that on February 10, 2016 appellant was working on the SAM 3 South Unit cleaning. A fire alarm drill was conducted around 5:00 p.m. at which time appellant had his cart half-in and half-out of the room he was cleaning. Another staff member pushed the cleaning cart back into the room and the cart ran over appellant's feet. Appellant

reported that while trying to leave the room both his hands were smashed into the glass doors of the patient's room.

In a letter dated May 24, 2016, Ms. Mohamed indicated that appellant initially reported his work injury occurred on February 17, 2016 during a fire drill; however, an incident report prepared by appellant's supervisor, confirmed the date of injury as February 10, 2016. Additionally, records received from the employing establishment's Safety Service fire drill participation log confirmed that the fire drill occurred on February 10, 2016.

In a June 28, 2016 decision, OWCP denied appellant's claim, finding that the evidence of record did not support that the injury or events occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

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.[3]

An employee's statement 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.[4] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden in 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. Circumstances such 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 doubt on an employee's statement in determining whether a *prima facie* case has been established.[5]

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *T.H.*, 59 ECAB 388 (2008).

[4] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

[5] *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

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.[6]

ANALYSIS

OWCP denied appellant's claim finding that he failed to establish that the claimed incident occurred as alleged. There is no dispute that appellant was actually performing the job of a housekeeping aid on February 10, 2016, the date which he alleges an injury.[7] Specifically, a May 17, 2016 employing establishment incident report signed by appellant's supervisor noted that on February 10, 2016 appellant was working in the SAM 3 South Unit cleaning unoccupied patients' rooms. A fire alarm drill was conducted around 5:00 p.m. at which time appellant had his cart half-in and half-out of the room when a staff member pushed the cleaning cart back into the room, running over appellant's feet.

A February 10, 2016 employing establishment fire drill log confirms that on February 10, 2016 a fire drill was conducted in building 330 at 1700 hours and that appellant was a participant. Additionally, an on-the-job injury and illness report dated February 24, 2016 prepared by appellant indicated that while he was finishing cleaning a room on 3D--South, a code red was alerted. Before he could place his mop into the mop bucket, one of the nurses shoved his cart back with great force causing the wheels to run over his feet. The Board finds that the evidence is undisputed that on February 10, 2016 appellant was performing his work duties as a housekeeping aid in the South Unit when a fire drill occurred and his cleaning cart was pushed and ran over his feet. The evidence, however, does not substantiate that appellant injured his arm or hand. The most contemporaneous medical report from Dr. Gould, dated February 24, 2016, makes no reference to a hand or arm condition.

The Board finds, however, that appellant failed to submit sufficient medical evidence to establish that the February 10, 2016 work incident caused or aggravated his bilateral foot and left arm conditions.

On February 24, 2016 Dr. Gould indicated that on February 17, 2016 appellant reported mopping a patient's room when a fire drill occurred and his cleaning cart was pushed and ran over the top of both of his feet. He diagnosed "possible contusion" to the top of bilateral feet. At best, this report provides only speculative support for causal relationship as the physician qualifies his support by diagnosing "possible" contusion to the top of the feet. Dr. Gould provided no medical reasoning to support his opinion on causal relationship.[8] He also reported

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] The Board notes that some documents indicate that the claimed injury occurred on February 17, 2016. However, as noted, the employing establishment human resource specialist confirmed through a fire drill log that the fire drill was conducted on February 10, 2016.

[8] Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

an inaccurate date of injury.[9] Therefore, this report is insufficient to meet appellant's burden of proof.

On March 2, 2016, Dr. Gould noted that appellant presented with pain over the dorsal of both feet caused by a cart rolling over them on February 17, 2016. He diagnosed residual discomfort of the feet due to the February 17, 2016 incident. In a report dated May 19, 2016, Dr. Gould diagnosed status post on-the-job injury. However, he appears merely to be repeating the history of injury as reported by appellant without providing his own opinion as to whether appellant's condition was work related. To the extent that Dr. Gould is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's bilateral foot conditions and the February 10, 2016 employment incident.[10]

In reports dated March 29 to April 4, 2016, Dr. Tobias treated appellant for left upper extremity edema. Appellant presented with left upper extremity swelling and reported being injured at work when a cart ran over his feet on February 17, 2016. In a March 30, 3016 report, Dr. Tobias diagnosed acute upper extremity DVT and left lower extremity swelling with recent injury. On April 13, 2016 she indicated that appellant's prior injury to his arm and legs was not a risk factor for DVT. Dr. Tobias indicated that the left arm DVT was not related to the claimed work injury. These records from Dr. Tobias do not support that the work incident caused or aggravated any diagnosed medical condition.[11] Rather, Dr. Tobias concluded that the DVT in the left arm was unrelated to the work injury that occurred in February 2016.

A March 29, 2016 report from Dr. Falls noted diagnoses and advised that appellant reported doing well until March 17, 2016 when his feet were run over by a work cart and he developed left upper extremity swelling. As noted above, Dr. Falls is repeating the history of injury as reported by appellant without providing his own rationalized opinion regarding the causal relationship between appellant's conditions and the work incident believed to have caused or contributed to such condition.[12] The probative value of his report is further diminished because it refers to an inaccurate injury date.[13] Therefore, this report is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on causal relationship between appellant's work incident and his diagnosed left arm and bilateral foot condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.[14]

[9] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

[10] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[11] *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

[12] *Supra* note 10.

[13] *Supra* note 9.

[14] *Supra* note 10.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence.[15] As appellant failed to submit such evidence, he has not met his 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.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish an injury causally related to a February 10, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: May 23, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[15] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).