United States Department of Labor
Employees' Compensation Appeals Board

S.Z., Appellant	)	
and	)	**Docket No. 19-1125**
	)	**Issued: October 22, 2020**
DEPARTMENT OF HOMELAND SECURITY, CUSTOMS & BORDER PROTECTION, San Diego, CA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 22, 2019 appellant filed a timely appeal from a March 6, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated October 19, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-1125 (issued October 19, 2020).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the March 6, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on June 10, 2018, as alleged.

FACTUAL HISTORY

On June 10, 2018 appellant, then a 46-year-old supervisory border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on that day he strained his right eye during approved physical fitness program time. He indicated that he was exercising on an elliptical machine at the station gym at approximately 5:00 p.m. when he experienced an "odd sensation" and pain, along with a loss of vision in his right eye, while in the performance of duty. Appellant did not stop work. On the reverse side of the claim form, a supervisor with the employing establishment checked a box marked "Yes" acknowledging that appellant was injured while in the performance of duty and that his knowledge of the facts regarding the injury agreed with statements from appellant and/or witnesses.

In Part B of an authorization for examination and/or medical treatment (Form CA-16), attending physician's report,[4] dated June 19, 2018, Dr. Nikolas London, a Board-certified ophthalmologist, indicated that he first examined appellant on June 11, 2018 after he experienced sudden vision loss in his right eye. He diagnosed retinal detachment and noted that appellant underwent surgery on June 12, 2018 to treat his condition.

On August 6, 2018 Dr. London indicated that he had seen appellant for a follow-up visit to perform a routine postoperative examination and opined that the vision in his right eye was slightly worse. He diagnosed lattice degeneration, pseudophakia, and retinal detachment in the right eye. Dr. London also noted that appellant had been diagnosed with recurrent retinal detachment in the left eye.

Appellant further submitted hospital records, preoperative diagnostic testing results, and an operative report dated June 12, 2018 noting that he underwent retinal detachment repair surgery that day.

In a January 30, 2019 development letter, OWCP indicated that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It requested that he submit additional factual and medical evidence in support of his claim and provided a questionnaire for his completion. OWCP explained that the evidence submitted was insufficient to establish that the alleged employment incident occurred as alleged. It also noted that no physician had provided a firm diagnosis of a work-related condition. OWCP afforded appellant 30 days to submit the necessary evidence.

[4] The Board notes that Part A, the first page of the Form CA-16, is not contained in the case record.

In response, appellant resubmitted the June 12, 2018 operative report and corresponding hospital records in support of his claim.

By decision dated March 6, 2019, OWCP denied appellant's claim finding that he had not established that the employment incident occurred on June 10, 2018, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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 timely filed within the applicable time limitation period of FECA,[5] that an injury 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.[6] 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.[7]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[8] Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[9] The second component is whether the employment incident caused a personal injury.[10]

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.[11] The 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

[5] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[9] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143(1989).

[10] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[11] *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

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 statements 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.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on June 10, 2018, as alleged.

Appellant has not established the factual component of his claim as he failed to explain how his claimed injury occurred. In a development letter dated January 30, 2019, OWCP provided a questionnaire for his completion and requested that he submit clarifying information describing how his claimed injury occurred. Appellant, however, did not complete and return the attached questionnaire and there is no statement in the record describing the specific alleged employment-related incident.[13] As he did not respond to the request for factual information and did not provide an explanatory statement, the record lacks sufficient factual evidence to establish specific details of how the claimed injury occurred.

The Board notes that the only explanation pertaining to the alleged June 10, 2018 traumatic incident was appellant's generalized and vague statement on his Form CA-1 that he experienced an "odd sensation," pain, and loss of vision in his right eye while exercising on an elliptical machine. While appellant sought treatment from Dr. London on June 11, 2018, he did not provide a history of injury, nor did he provide an answer as to whether appellant's condition was caused or aggravated by an employment activity. By failing to respond to the questionnaire and describe the specific employment incident and circumstances surrounding his alleged injury, and by failing to provide a history of injury when seeking medical treatment, appellant has not established that the traumatic injury occurred in the performance of duty, as alleged.[14] Thus, the Board finds that he has not met his burden of proof.[15]

[12] *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[13] *See M.F.*, Docket No. 18-1162 (issued April 9, 2019).

[14] *See H.B.*, Docket No. 18-0278 (issued June 20, 2018); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

[15] The Board notes that the case record contains an attending physician's report (Part B of a Form CA-16), dated June 19, 2018. A properly completed Form CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

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 has not met his burden of proof to establish a traumatic injury in the performance of duty on June 10, 2018, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the March 6, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2020
Washington, DC

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

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

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