

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

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R.T., Appellant)	
)	
and)	Docket No. 14-316
)	Issued: March 14, 2014
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS HEALTH ADMINISTRATION,)	
San Antonio, TX, Employer)	
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Appearances:
Dr. Anthony Rogers, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 25, 2013 appellant, through his representative, filed a timely appeal from the November 22, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his claim. Pursuant to the Federal Employees' Compensation Act¹ (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 met his burden of proof to establish that he sustained a traumatic injury in the performance of duty on April 30, 2012.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 10, 2012 appellant, then a 51-year-old medical instrument technician, filed a traumatic injury claim alleging that on April 30, 2012 he sustained injury to his low back, right shoulder, right knee and right ankle in the performance of duty.² He alleged that a patient became combative and he reached over a stretcher to prevent injury to the patient and staff. Appellant stopped work on May 7, 2012. The employing establishment controverted the claim and alleged that there were different stories about how the injury occurred. It noted that appellant was hurt several days earlier at home. The employing establishment noted that on April 27, 2012 he was assaulted by a family member and sustained a severe back and right shoulder injury.

In a May 24, 2012 letter, OWCP advised appellant that additional factual and medical evidence was needed. It requested that he provide an explanation regarding the date of the injury and when he reported it to his supervisor. OWCP explained that a physician's opinion was crucial to his claim and allowed 30 days to submit the requested information.

In an April 27, 2012 report, appellant advised the employing establishment that he had been assaulted by his daughter's boyfriend with a baseball bat. The administrative officer, Erik Zielinski, indicated that appellant lifted up his scrubs to show his bruises from the assault to his lower back, upper back and right shoulder. He noted that appellant had been seen by his private health care provider and was "just a little sore but could work."

In a May 1, 2012 report, appellant notified Mr. Zielinski that he had been injured at work the day before and would not come to work that day. Mr. Zielinski noted that he spoke to the service chief, Dr. Rogers, who confirmed that he could hear appellant screaming in the hallway and was concerned for his safety. He also noted that a progress note was taped to the door of his office which indicated that appellant was on light duty and would be reevaluated on May 9, 2012. In a May 2, 2012 report, Mr. Zielinski noted that appellant was late for a scheduled medical examination. He marked appellant absent without leave. Appellant became angry and unprofessional when asked for medical documentation. He began screaming and yelling at Mr. Zielinski and stated that he was "beat up by two patients."

In a May 2, 2012 treatment note, Dr. Robert Pinter, an employing establishment physician Board-certified in internal and occupational medicine, noted that on April 13, 2012 appellant sustained an injury from pulling a gurney. Appellant reported three new injuries to the right shoulder, right low back and right distal lateral leg. Dr. Pinter related a history that two days prior a patient was awakening from anesthesia and became confused and kneed appellant a few times in the lateral chest at about 1:00 p.m. Later that day, another patient awakening from anesthesia grabbed appellant's right arm while being transferred from the operating room table to a gurney, and pulled on his shoulder while trapped between the table and the gurney. Dr. Pinter diagnosed right shoulder probable rotator cuff strain, right high ankle sprain/contusion, right chest contusion, right low back strain and left low back strain which was "apparently resolved but difficult to examine based on several other areas that may detract from the pain there. He

² The record reflects that appellant has a prior claim for a traumatic injury on August 2, 2001 under File No. xxxxxx992 and April 2, 2004 under File No. xxxxxx690.

opined that the “injuries are consistent with but out of proportion to the history as stated.” Dr. Pinter released appellant to limited duty.

In a May 7, 2012 disability certificate, Dr. Helo Chen, an osteopath Board-certified in family medicine, advised that appellant was unable to work from May 7 to 9, 2012 but could return to work on May 10, 2012. In a May 9, 2012 duty status report, he indicated an April 30, 2012 date of injury and stated that there were lumbar findings. Dr. Chen advised that appellant could work with restrictions.

In statements dated May 10, 2012, appellant described the incidents of April 30, 2012. At approximately 11:30 a.m., he was assisting a physician transferring a patient from the operating room when the patient tried to get off of the stretcher. Appellant tried to restrain the patient, who became combative. He noted that, despite a code green, help never came. At 4:00 p.m. a patient who just had a laminectomy was in the prone position and his arm dropped between the operating room table and the stretcher. Appellant attempted to help the patient, who woke up and turned to the right side while their arms were still trapped. The patient extubated himself and became combative and appellant was injured while trying to restrain him. Appellant alleged that he was placed in two dangerous positions in one day and that, as a result, he had a severe back injury and was seeking medical care.

A May 18, 2012 lumbar spine magnetic resonance imaging (MRI) scan report by Dr. Douglas K. Smith, a Board-certified diagnostic radiologist, revealed broad-based disc bulges with annular tearing at L2-3 and L3-4, broad-based disc herniations at L4-5 and L5-S1 with abutment of both L5 and S1 nerve roots. In a May 18, 2012 right knee MRI scan, Dr. Smith noted ill-defined midsubstance anterior cruciate ligament (ACL) differential fibers, probably functional deficiency of the ACL but no pivot shift on contusions identified. A short segment horizontal cleavage tear of the mid-third segment of the medial meniscus and no unstable meniscal tears were identified. OWCP received disability certificates from a physician’s assistant and a May 24, 2012 treatment form from a nurse.

In a letter dated May 24, 2012, the employing establishment advised appellant’s treating physician, Dr. Chen, that on April 27, 2012 appellant sustained significant bruises after being assaulted on the lower back, upper back and right shoulder. It noted that appellant described being struck with a baseball bat by his daughter’s boyfriend.

In a May 24, 2012 addendum, Dr. Pinter reviewed an April 27, 2012 report which revealed that appellant was off work due to being hit with a baseball bat. He noted that appellant was battered in the right shoulder, lower and upper back and ecchymoses were seen by the supervisor in these areas. Dr. Pinter noted that the battery occurred before appellant’s May 2, 2012 visit and could have contributed to or been greatly responsible for the findings on physical examination as they were in the same areas in which appellant had complaints. It helped to explain why appellant’s injuries seemed out of proportion to the alleged incidents. Dr. Pinter placed appellant on light duty.

In a June 18, 2012 report, Dr. Chen noted appellant’s history of injury and treatment and advised that he initially presented on May 7, 2012 for evaluation of low back pain, right knee pain, right ankle and right shoulder pain incurred from a traumatic work accident. Appellant

stated that, while at work on April 30, 2012, he had to restrain a combative patient who was coming out of anesthesia. Dr. Chen noted that appellant complained of pain on a level of 6 or 7 on a 10-point scale. His pain increased with certain activities, including pushing and pulling, overhead movement, coughing or sneezing, and necessary lifting and bending, along with prolonged standing and walking. Dr. Chen stated that appellant's past medical history was reviewed and was noncontributory to his present condition. Appellant had a previous injury to his right ankle which resolved. Dr. Chen received correspondence from a nurse, who asserted that appellant's injuries stemmed from a beating by his daughter's boyfriend; but when he questioned appellant, "he vehemently denied that this took place along with his daughter's boyfriend, who gave a statement over the phone. They actually seemed to find this somewhat comical in addition to being offensive." Dr. Chen examined appellant and diagnosed a lumbar herniated nucleus pulposus (HNP), left medial meniscus tear; right shoulder unspecified site of sprain/strain and right ankle sprain. He opined that the injury occurred in one single work shift during an identifiable time and place with an identifiable body part affected. Dr. Chen found that appellant was injured while attempting to restrain a combative patient prematurely coming out of anesthesia. The mechanism of injury supported the diagnosis. Dr. Chen advised that appellant could not return to modified duty and his activities of daily living were limited.

By decision dated July 5, 2012, OWCP denied appellant's claim. It found that the medical evidence did not support that his claimed conditions were caused by the work incident.

On July 24, 2012 appellant's representative requested reconsideration.

By decision dated August 8, 2012, OWCP denied appellant's request for reconsideration finding that the evidence submitted was insufficient to warrant further merit review.

By letter dated September 16, 2012, appellant's representative requested reconsideration. He argued that the employing establishment did not advise appellant that it was contesting the claim based on an injury at home. Appellant's representative argued that the claim form was signed by a workers' compensation manager, not by appellant's supervisor and that it was misleading. OWCP received documentation pertaining to appellant's request for accommodations under the Americans with Disability Act (ADA). It received reports previously submitted and a July 11, 2012 report from the employing establishment pertaining to an incident in which appellant was told to leave a laboratory.

By decision dated December 10, 2012, OWCP denied modification of its prior decision.

In a November 28, 2012 disability certificate, Dr. Chen advised that appellant could return to full duty. In a November 20, 2012 duty status report, he noted that appellant reported working with a combative patient. Dr. Chen indicated that appellant had lower back and shoulder findings and could return to work with no physical restrictions.

Appellant's representative asked that appellant be returned to light-duty work and questioned his proposed termination because he filed a claim.

On August 15, 2013 appellant requested reconsideration. In an August 15, 2012 report, Dr. Chen noted that appellant's injury was the result of two traumatic incidents at work which occurred as he was attempting to restrain combative patients on April 30, 2012. The patients

were disoriented and became aggressive while awakening from anesthetics. Dr. Chen advised that appellant's right arm and low back were injured during the first incident and the second incident injured his right shoulder, right knee and right ankle. The injuries were the result of restraining two physically aggressive patients while performing his work duties. Dr. Chen noted that the employing establishment suggested that appellant had been assaulted with a baseball bat prior to his workplace injury, but he did not have any documentation regarding that incident. He noted that appellant denied any prior physical assault and stated that the question of preexisting conditions was irrelevant.

By decision dated November 22, 2013, OWCP denied modification of its prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 FECA⁴ and that an injury was sustained in the performance of duty.⁵ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.⁷ 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.⁸

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.⁹

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁸ See *John J. Carlone*, 41 ECAB 354 (1989). For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

Appellant alleged that on April 30, 2012 he was injured in two separate incidents at work due to physical interactions with two postsurgical patients. The evidence supports that the claimed incidents occurred. Therefore, the Board finds that the claimed traumatic incidents occurred in the performance of duty. The medical evidence, however, is insufficiently rationalized to establish the employment incidents caused an injury.

In a June 18, 2012 report, Dr. Chen noted appellant's history of injury and treatment at work on April 30, 2012. Appellant had to restrain a combative patient who was coming out of anesthesia. Dr. Chen stated that appellant's past medical history was "noncontributory." He received correspondence from a nurse, who asserted that appellant's injuries stemmed from a beating by his daughter's boyfriend but appellant had vehemently denied that such incident took place along with the daughter's boyfriend, who gave a statement over the telephone. Dr. Chen diagnosed a lumbar herniated nucleus pulposus, left medial meniscus tear; right shoulder sprain/strain and right ankle sprain. He opined that appellant was injured while attempting to restrain a combative patient. In an August 15, 2012 report, Dr. Chen opined that appellant's injury was the result of two traumatic work incidents that occurred as he attempted to restrain combative patients on April 30, 2012. He advised that appellant's right arm and low back were injured during the first incident and the second incident injured his right shoulder, right knee and right ankle. Dr. Chen opined that the injuries resulted from appellant's work duties. While the employing establishment suggested that appellant was previously assaulted with a baseball bat, Dr. Chen did not have any documentation regarding the incident and appellant denied a prior assault. The Board finds that the opinion of Dr. Chen is of diminished probative value as it is based upon an inaccurate history of injury. Although the two incidents at work involving the patients are not contradicted, the record contains an April 27, 2012 report of Mr. Zielinski who noted that appellant sought leave following a domestic assault on or about April 26, 2012. Appellant showed bruises on his lower back, upper back and right shoulder. This report predates the claim of injury on April 30, 2012 that appellant filed on May 10, 2012. The most contemporaneous evidence of record, the April 27, 2012 report, supports that the battery occurred.¹⁰ It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of diminished probative value.¹¹ Dr. Chen did not record a proper factual history or otherwise provide a reasoned explanation of how the work incidents caused or contributed to the diagnosed conditions in view of the assault on appellant with a baseball bat. The other reports from Dr. Chen do not specifically address how the work incidents caused or contributed to the diagnosed medical conditions.

The Board also notes that Dr. Pinter examined appellant on May 2, 2012 and related that appellant indicated that two days ago he was in altercations on two separate incidents with patients awakening from anesthesia. Dr. Pinter diagnosed right shoulder probable rotator cuff strain, right high ankle sprain/contusion, right chest contusion, right low back strain and left low

¹⁰ The Board has held that contemporaneous evidence is entitled to greater probative value than later evidence. S.S., 59 ECAB 315 (2008).

¹¹ *Douglas M. McQuaid*, 52 ECAB 382 (2001).

back strain, that were “apparently resolved.” At that time, he opined that the “injuries are consistent with but out of proportion to the history as stated.” In a May 24, 2012 addendum, Dr. Pinter noted reviewing the April 27, 2012 report and opined that he believed the battering occurred before appellant’s May 2, 2012 visit and indicated that the findings could have contributed to or been greatly responsible for his findings on physical examination as they were in the same areas that appellant had complaints. He noted that it helped to explain why his injuries seemed out of proportion to the alleged incidents.

Consequently, there is no reasoned medical evidence, based on an accurate factual history, which explains why any of appellant’s diagnosed conditions were caused or aggravated by his encounters with patients on April 30, 2012, and why they were not instead attributable to the baseball bat assault noted in the April 27, 2012 report of contact. For these reasons, appellant has not established that the April 30, 2012 employment incidents caused or aggravated a specific injury.

On appeal, appellant’s representative made several arguments related to a request for a reasonable accommodation under ADA. However, the Board’s jurisdiction is limited to matters arising under FECA for which OWCP has issued a final decision.¹² The only issue on appeal is whether appellant met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on April 30, 2012. Since appellant’s claim, as explained, has not been established, there is no basis for any work restrictions attributable to an employment injury under FECA. His representative also submitted additional evidence on appeal. However, the Board may not consider such evidence for the first time on appeal.¹³

Appellant may submit evidence or argument with a written request for reconsideration 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 in establishing that he sustained a traumatic injury in the performance of duty on April 30, 2012.

¹² 20 C.F.R. § 501.2(c).

¹³ *See id.*

ORDER

IT IS HEREBY ORDERED THAT the November 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 14, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board