United States Department of Labor
Employees' Compensation Appeals Board

D.J., Appellant	)	
and	)	**Docket No. 10-1004**
	)	**Issued: April 22, 2011**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Harper's Ferry, WV, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 1, 2010 appellant, through her attorney, filed a timely appeal from a January 12, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issue in this case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained an injury in the performance of duty on February 10, 2009.

FACTUAL HISTORY

On March 3, 2009 appellant, then a 62-year-old civilian conservation center director, filed a traumatic injury claim alleging that on February 10, 2009 she was injured when she was hit and pushed by students who were fighting while she was at work. She stopped work on

[1] 5 U.S.C. § 8101 *et seq.*

February 11, 2009 and returned on February 17, 2009. Appellant first sought medical treatment on the date of the claimed injury.

By letter dated May 14, 2009, the Office informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days.

In a letter dated June 2, 2009, appellant indicated that there were two witnesses but she was unable to obtain their statements as she was "mandated" to work at home and not return to the employing establishment. A February 10, 2009 workplace injury report stated that she was injured at 8:30 a.m. on that date in the center director's office. The report stated that appellant injured her back and was struck in the left side of her face.

In a February 10, 2009 treatment note, Dr. Sharon Peake, a Board-certified internist, noted that appellant was at "work at Job Corps and got in between two girls fighting in the process of trying to break up the fight. She was bruised in her chest and back and says she was also hit in the face." Appellant had costochondral cartilage tenderness on examination in addition to a bruise over the left back. In an assessment, Dr. Peake noted that appellant was upset and subjected to "hits to face, back and chest." She continued to treat her and provided disability certificates dated February 16 and March 3, 2009. Dr. Peake placed appellant off work from February 11 to 18, 2009 and advised that she was last seen on March 3, 2009 for an appointment. In a February 10, 2009 x-ray of the chest and ribs, read by Dr. Frederick Ammerman, a Board-certified diagnostic radiologist, revealed trauma to the left posterior ribs and no evidence of rib fracture or other rib abnormality.

In an April 14, 2009 treatment note, Dr. Safa Osman, a Board-certified internist and associate of Dr. Peake, noted that appellant was seen for continued facial and back pain since she was "hit" at her job. She stated that appellant's mother passed away at the end of the previous month and that appellant felt "more stressed out." Dr. Osman diagnosed "other insomnia," "unspecified backache" and "anxiety state unspecified." She provided a disability certificate for February 10, March 3 and April 14, 2009. In a June 1, 2009 report, Dr. Osman noted first seeing appellant on February 10, 2009. She reported a history of injury which included that appellant "got in between two girls fighting" and in the process was bruised in the chest and back. Dr. Osman diagnosed cracked teeth (upper jaw), headache, back pain and anxiety.

The Office received physical therapy reports dating from April 21 to June 1, 2009. It also received a note from Linda Packhill, a counselor, advising that appellant was undergoing mental health counseling.

By decision dated June 16, 2009, the Office denied appellant's claim on the grounds that she did not establish an injury, as alleged.

On July 6, 2009 counsel requested a hearing. The hearing was scheduled for October 5, 2009. However, appellant failed to appear for her hearing and counsel requested an examination of the written record in lieu of a hearing.

In an October 29, 2009 letter, counsel enclosed an October 16, 2009 letter from appellant describing the February 10, 2009 incident when a fight broke out between two girls in her office. Appellant stated that the girls first fought in the employing establishment's cafeteria. After she was informed of the fight, the two girls were escorted to her office with one girl placed in her

office and the other girl placed across the hall in a conference room. As appellant was talking to one of the girls about the fight, the other girl burst into her office knocking her against the wall, and the two girls began fighting. She stated that she was hit with blows as the two girls fought noting that she was pinned against a wall and could not move. When the fight was broken up, appellant felt pain in her lower back, chest and left side of her face, jaw and neck as well as a headache. She informed her manager of the fight and then she went to see a doctor. Appellant noted that she later found out that a tooth on the left side of her face had cracked and she continued to have "terrible pain in [her] lower back and [her] tooth." The Office also received copies of previously submitted reports.

By decision dated January 12, 2010, an Office hearing representative affirmed as modified the Office's June 16, 2009 decision. It found that the evidence supported that the claimed events occurred; however, there was no medical evidence that provided a diagnosis which could be connected to the events. As to the cracked tooth, the Office hearing representative suggested medical evidence from a dentist, noting the specific tooth, would be necessary. As to the anxiety, additional evidence from a psychiatrist would be necessary. The Office denied the claim after which appellant's representative filed the appeal.

LEGAL PRECEDENT

An employee seeking benefits under the Act[2] 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act[3] and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually

[2] *Supra* note 1.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

experienced the employment incident at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.[7]

In cases where there is no dispute that the incident occurred as alleged and the injury is readily apparent, *i.e*., amputation, laceration, abrasion, bruise, swelling, *etc*., the Office may determine that minimal evidence is required to establish fact of injury.[8] Office procedures state: "In clear-cut traumatic injury claims, where the fact of injury is established and is clearly competent to cause the condition described (for instance, a worker falls from a scaffold and breaks an arm), no opinion is needed. The physician's affirmative statement is sufficient to accept the claim.[9] All other types of traumatic injury claims must be supported by rationalized medical opinion evidence."[10]

ANALYSIS

There is no dispute that the February 10, 2009 incident occurred as alleged. The evidence supports and the Office accepted that appellant was struck by two girls while they were fighting and that she was pinned against a wall and unable to move. The Office found, however, that there was no firm diagnosis of injury as a result of the incident.

The Board finds that appellant was in the performance of duty when the incident occurred. This situation is contrasted with those situations where a work-place altercation is a result of a personal or private dispute that has been imported into the workplace. Clearly, appellant was engaged in her duty when she, in her managerial role, was trying to resolve the matter. There is no evidence that appellant had a personal relationship with the two girls outside the employing establishment and the record reflects that the fighting was not with appellant; that she was the unfortunate one to have been in the middle of the fighting.[11] Therefore, the Board finds that the first component of fact of injury is established; the claimed incident -- that appellant was hit and pushed by students who were fighting -- occurred in the performance of duty.

As to whether appellant incurred an injury as a result of the accepted incident, the Board finds there is a diagnosis of injury. In cases where there is no dispute that the incident occurred as alleged and the injury is readily apparent, *i.e*., amputation, laceration, abrasion, bruise, swelling, *etc*. the Office may determine that minimal evidence is required to establish fact of injury.[12] The record contains a treatment note on the date of injury, February 10, 2009, from

[7] *Paul Foster*, 56 ECAB 1943 (2004).

[8] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(2) (June 1995).

[10] *Id*. at Chapter 2.805.3(d)(3). *Compare Jennifer Atkerson*, 55 ECAB 317 (2004). *See also Deborah L. Beatty*, 54 ECAB 340 (2003).

[11] *See M.A.*, Docket No. 08-2510 (issued July 16, 2009) (assaults arise out of the employment either if the risk of assault is increased because of the nature or setting of the work or if the reason for the assault was a quarrel having its origin in the work; assaults for private reasons do not arise out of employment unless, by facilitating an assault which would not otherwise be made, the employment becomes a contributing factor).

[12] *Supra* note 8 at 1151.

Dr. Peake who noted that appellant "got in between two girls fighting in the process of trying to break up the fight" and sustained bruises. Dr. Peake provided an assessment in which she noted that appellant was subjected to "hits to face and back and chest." The Board notes that this report supports that appellant sustained bruising due to the undisputed fight on February 10, 2009 and can be accepted as sufficient evidence of injury.

Section 8102(a) of the Act states in relevant part as follows:

"The United States *shall furnish* to an *employee who is injured while in the performance of duty*, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation." (Emphasis added.)[13]

If the Office accepts that an injury occurred in the performance of duty as alleged, then the claimant is therefore entitled to payment of, or reimbursement for, expenses incurred for medical treatment necessitated by the accepted injury. In some cases, medical treatment necessitated by the accepted injury may be nothing more than an initial medical examination undertaken to determine the precise nature of the "injury" sustained.

As appellant has been found to have been injured in the performance of duty, the case is remanded for further development as to whether appellant is entitled to reimbursement of any medical expenses incurred with regard to the accepted injury.

The Board affirms the Office's finding on the current medical evidence of record of no other firm diagnosis. There is a diagnosis of cracked tooth and anxiety and such conditions are alleged to have resulted from the accepted work related injury. Such conditions would not fall within the "clear-cut traumatic injury" scenario, and require rationalized medical evidence to establish their causality to the injury.

It was not until the March 3, 2009 report of Dr. Peake that there was any reference to anxiety. The record reflects that it was also at that time when appellant's mother became extremely ill and later died. Further, it was not until the June 1, 2009 report of Dr. Osman when a diagnosis of cracked teeth (upper jaw) and pain appeared. The Office properly found that appellant did not provide a rationalized medical report connecting these conditions to the accepted injury.

The Board will remand this case for further development. It should make appropriate findings as to her entitlement to medical expenses and/or wage-loss compensation for any time she missed time from work due to her accepted employment injury. After such further development as the Office considers necessary, it shall issue an appropriate decision on appellant's entitlement to benefits under the Act.

[13] *Id.* at 1152.

CONCLUSION

The Board finds that appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on February 10, 2009.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs' hearing representative dated January 12, 2010 is reversed. The case is remanded for further development consistent with this decision.

Issued: April 22, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board