United States Department of Labor
Employees' Compensation Appeals Board

J.O., Appellant	)	
and	)	**Docket No. 12-266**
	)	**Issued: June 11, 2012**
DEPARTMENT OF THE ARMY, FORT SAM HOUSTON, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 8, 2011 appellant filed a timely appeal from an October 18, 2011 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 established a traumatic injury in the performance of duty on March 28, 2011.

FACTUAL HISTORY

On April 11, 2011 appellant, then a 63-year-old materials handler, filed a traumatic injury claim (Form CA-1) alleging that on March 28, 2011 he sustained an injury when "getting off the bus going down the steps my leg gave out." He described the injuries as left leg, low back and

[1] 5 U.S.C. § 8101 *et seq.*

emotional stress. Appellant indicated that the incident occurred at 6:45 a.m. on March 28, 2011. The claim form requests an explanation from a supervisor if the incident is "not in the performance of duty" and contains a statement under this heading that appellant "was getting off the [employing establishment] bus at the main entrance of the hospital."

On April 7, 2011 appellant stated that on the date of injury he had arrived at the employing establishment parking lot, parked his car and boarded the shuttle bus. He stated that the seats were cramped and uncomfortable and when he got up, his left leg felt weak. As appellant was going down the steps, his left leg gave out and began to hurt. The bus dropped him off in front of the medical center where he worked. Appellant also referred to lifting heavy pallets after returning to work on March 30, 2011 and emotional stress as a result of being falsely accused of bringing a gun to work.

Appellant submitted an April 7, 2011 hospital discharge report that indicated he had been treated on April 2, 2011 for deep vein thrombosis (DVT). In an attending physician's report (Form CA-20) dated April 12, 2011, Dr. Leo Edwards, an internist, provided a history of swelling in the left leg due to a blood clot. He diagnosed DVT, back strain and emotional stress, checking a box "no" regarding whether the conditions were causally related to an employment activity. Dr. Edwards completed a duty status report (Form CA-17) dated April 12, 2011. The description of injury was getting off bus at front entrance of hospital and the diagnoses "due to injury" were back pain and clot in leg.

By decision dated May 27, 2011, OWCP denied the claim for compensation. It found that the medical evidence was insufficient to establish an injury causally related to the employment incident.

Appellant requested a review of the written record. He submitted a May 3, 2011 report from Dr. Edwards addressing treatment for anemia and a June 3, 2011 report for treatment of back pain. In a report dated July 13, 2011, Dr. Edwards stated that appellant had "problems with trauma earlier in the year that injured his leg and also aggravated his back. This injury to the leg resulted in changes that allowed a clot to develop in the leg and resulted in him having to be on coumadin. The back pain was worsened such that he is on increased chronic meds for his back." In a letter dated August 15, 2011, the employing establishment noted that appellant had not worked since April 2, 2011 and was in an absent without leave status.

By decision dated October 18, 2011, an OWCP hearing representative denied the claim for compensation. He found the exact nature of the incident was unclear. The hearing representative found that appellant had not established that the alleged incident was in the performance of duty. Acknowledging that injuries sustained on employing establishment premises while going to or from work are in the performance of duty, he stated that "the claimed injury occurred at 8:45 a.m. [sic] when [appellant's] work started at 7:00 a.m." The hearing representative further stated that the employing establishment had controverted the claim. In addition, he found that the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[2] The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of an in the course of employment."[3] An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.[4] If the claimant is in the course of employment, OWCP considers whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[5]

OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[6] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[7]

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

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[2] *Id*. at § 8102(a).

[3] *Valerie C. Boward*, 50 ECAB 126 (1998).

[4] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[5] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

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

[7] *Id.*

[8] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

ANALYSIS

The hearing representative affirmed the denial of the claim for compensation on three grounds: (1) appellant was not in the performance of duty at the time of the alleged incident on March 28, 2011; (2) appellant did not establish the incident occurred as alleged; and (3) the medical evidence did not establish an injury causally related to a March 28, 2011 employment incident. The Board will consider each of these grounds.

With respect to performance of duty, the hearing representative provided little supporting evidence for a finding that appellant was not in the performance of duty. The Board finds the probative evidence indicates that he was in the performance of duty at the time of the alleged March 28, 2011 incident. The record indicates that appellant had arrived at the employing establishment parking lot and was taking a shuttle bus from the parking lot to his work building. The bus stopped in front of the main entrance to the work building. The factors considered in determining whether an employee arriving at work is in the performance of duty are whether the injury occurred on the employing establishment's premises, the time interval before the work shift and the activity at the time of the injury.[9] The incident occurred on the employing establishment's premises and the hearing representative accepted that appellant was on the employing establishment premises. The basis for finding appellant not in the performance of duty consisted of his arrival time 15 minutes before his work shift. The hearing representative cited no authority for the proposition that arriving 15 minutes before a work shift precludes a finding that the employee was in the performance of duty. The Board has indicated that the arrival time must be a reasonable interval based on the circumstances. In *James E. Chadden, Sr.*,[10] the employee arrived 30 minutes before the start of his work shift and the Board found that this was not an unusual length of time that would preclude coverage under FECA.

Moreover, the activity appellant was engaged in was reasonably incidental to the fulfillment of his job duties.[11] He took a shuttle bus from the parking lot to the building at which he worked in preparation for his work shift. Appellant was not engaged in any unrelated personal activity, such as getting breakfast.[12]

The Board finds that the evidence of record supports a finding that appellant was in the performance of duty on March 28, 2011 at the time of the alleged incident. The time, manner and place of the activity all support a finding that he was in the performance of duty and no probative contrary evidence was presented. The supervisor's opinion on the claim form that appellant was not in the performance of duty is of little evidentiary weight as he merely stated that appellant arrived at the front entrance.

[9] *See F.H.*, Docket No. 11-738 (issued November 8, 2011).

[10] 40 ECAB 312 (1988). *But see Nona L. Noel*, 36 ECAB 329 (1984).

[11] To support an incident in the performance of duty, the activity should be reasonably fulfilling the duties of the employment or incidental thereto. *See T.M.*, Docket No. 11-528 (issued December 13, 2011).

[12] *See George E. Franks*, 52 ECAB 474 (2001).

The next question is whether the hearing representative properly found that an incident had not been established as alleged. In this case, appellant provided a clear statement regarding the incident and no opposing evidence was provided. 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] There are no inconsistencies in appellant's allegation that would cast serious doubt upon the validity of the claim.[14] Appellant stated that he was riding on the shuttle bus, felt cramped and his leg became weak and gave out as he descended the steps of the bus. He did not describe any fall to the ground but this does not preclude the occurrence of an employment incident. The evidence establishes the employment incident as alleged when appellant's left leg felt weak as he went down the steps of the bus.

The Board finds that the evidence establishes an employment incident on March 28, 2011 as alleged. In order to establish an injury in the performance of duty, however, appellant must submit rationalized medical evidence on causal relationship. He did not meet his burden of proof in this regard. Dr. Edwards has diagnosed DVT and appellant received hospital treatment from April 2 to 7, 2011. There is no rationalized medical opinion on causal relationship between the diagnosed DVT and the March 28, 2011 employment incident. Dr. Edwards did not provide a complete or accurate history of the employment incident in any of his reports. The CA-20 form report dated April 12, 2011 checked a box "no" on causal relationship with an employment activity. The July 13, 2011 brief report generally refers to a "trauma" without further explanation. Dr. Edwards also diagnosed a back strain, but again there is no rationalized opinion, based on a complete and accurate history, on causal relationship between a back strain and the employment incident.[15]

With respect to a claim for "emotional stress," there is no probative medical evidence with respect to the March 28, 2011 employment incident.

The Board finds that appellant was in the course of employment on March 28, 2011 and experienced the employment incident, as alleged. Appellant did not, however, meet his burden of proof with respect to submitting sufficient medical evidence to establish a left leg injury.

On appeal, appellant states that he was on the employing establishment premises when he was injured and he provided additional description of the employment incident. As noted, the Board finds that the evidence supports that he was in the performance of duty at the time of the employment incident. Appellant also referred to lifting heavy pallets on March 30, 2011. The only issue before the Board is the claim for a traumatic injury on March 28, 2011. Additional employment incidents would require the filing of an appropriate new claim for injury.

With respect to the claim for injury on March 28, 2011 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.

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[13] *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

[14] *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[15] On appeal, appellant submitted additional medical evidence. The Board's review of a case is limited to evidence in the case record that was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1).

CONCLUSION

The Board finds that appellant has not established an injury in the performance of duty on March 28, 2011.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 18, 2011 is modified to reflect that appellant was in the performance of duty and established an incident as alleged. The decision is affirmed as modified.

Issued: June 11, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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