United States Department of Labor
Employees' Compensation Appeals Board

R.K., Appellant	)	
and	)	**Docket No. 13-119**
	)	**Issued: March 13, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Oakland, CA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 22, 2012 appellant filed a timely appeal of the July 24, 2012 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 the case.

ISSUE

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

FACTUAL HISTORY

On April 7, 2012 appellant, then a 57-year-old janitor, filed a traumatic injury claim alleging that, on April 3, 2012, he pulled a muscle or tendon in his right leg when he slipped while in the third floor men's locker room. He stopped work on April 3, 2012 and returned to

[1] 5 U.S.C. §§ 8101-8193.

work on April 19, 2012. The employing establishment noted that appellant was assigned to the first floor and had no assigned work on the third floor.

Appellant submitted an April 4, 2012 statement which noted that at 2:45 p.m. he was in the third floor locker room and slipped and pulled a muscle in his right leg. He noted purchasing a hot patch for the pain and seeking medical attention. In an April 6, 2012 note, Dr. Mervyn Nicholas, an internist, noted treating appellant at the Veterans Affairs Medical Center for an injury and noted that he would be off work until April 14, 2012.

A continuation of pay nurse report dated April 24, 2012 noted that appellant stopped work on April 3, 2012. Appellant reported that his condition was improving and he was planning on returning to work on April 21, 2012. The nurse noted closing the case on April 24, 2012.

By letter dated June 22, 2012, OWCP advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that his claim was administratively handled to allow medical payments up to $1,500.00; however, the merits of the claim had not been formally adjudicated. OWCP advised that, because appellant had not returned to full duty, his claim would be formally adjudicated. It requested that he submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by him had contributed to his claimed right leg injury.

On July 24, 2012 OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish that work events caused a medical condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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 occupational disease.[2]

To determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of 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.[3] The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition,

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

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS

In the instant case, it is not disputed that appellant worked as a janitor and that on April 3, 2012 he slipped while in the men's locker room. However, he has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the slip at work or that any pulled muscle or tendon in the right leg is causally related to the employment factors or conditions.

On June 22, 2012 OWCP advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated his claimed condition.

The only medical evidence submitted by appellant was an April 6, 2012 note from Dr. Nicholas who noted treating appellant at a Veterans Affairs Medical Center for an injury and would be off work until April 14, 2012. However, this note neither provides a diagnosis of a medical condition,[7] notes a history of injury[8] or offers an opinion on how appellant's

[4] *Id*.

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

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

[7] *See Deborah L. Beatty*, 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

[8] *Frank Luis Rembisz,* 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

employment could have caused or aggravated his condition.[9] Consequently this note was of no probative value and does not establish appellant's traumatic injury claim.

As noted, part of appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship between the employment and the diagnosed condition. Therefore, this note is insufficient to meet his burden of proof.

The record contains no other medical evidence from a physician. Because appellant has not submitted reasoned medical explaining how and why his pulled muscle or tendon of the right leg is employment related, he has not met his burden of proof.

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 was sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.[10] Appellant failed to submit such evidence, and OWCP therefore properly denied his claim for compensation.[11]

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 that his claimed conditions were causally related to his employment.

[9] *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).

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

[11] After OWCP's July 24, 2012 decision, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the July 24, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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