

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

M.O., Appellant)	
)	
and)	Docket No. 16-0106
)	Issued: March 8, 2016
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL, Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 16, 2015 appellant filed a timely appeal from a May 26, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 the accepted work incident of October 29, 2014 caused an injury in the performance of duty.

FACTUAL HISTORY

On October 30, 2014 appellant, then a 49-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained mental stress in the performance of duty on October 29, 2014. He did not stop work.

¹ 5 U.S.C. § 8101 *et seq.*

In an October 30, 2014 statement, appellant indicated that on October 29, 2014 at approximately 10:30 a.m., he was delivering mail on the 8500 block of Kingston, when he noticed a young man on the opposite side of the street watching him delivering mail. He noted that when he completed his delivery, the man was standing next to his employing establishment vehicle. Appellant explained that the man was staring at him and when appellant asked him if he needed something, the man stated, “why are you staring at me?” He explained that he immediately got into his vehicle and left. As appellant was leaving, he looked into his rearview mirror and that was when he noticed that the individual pulled a gun out of his pocket. Appellant notified the police and his supervisor.

By letter dated November 10, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested that he submit additional supportive factual and medical evidence.

In a November 20, 2014 statement, appellant explained that his statement was revised. He noted that the man who was staring at him, was pulling a gun in and out of his pocket and he felt threatened. Appellant advised that he immediately got into his vehicle and drove off. He explained that he looked in his rearview mirror and saw the guy pull the gun out of his pocket. Appellant notified the police and his supervisor.

By decision dated December 15, 2014, OWCP denied appellant’s claim. It found that he established the factual component of his claim. However, the medical component had not been met. OWCP noted that appellant did not submit any medical evidence containing a medical diagnosis in connection with the injury and or events.

On December 22, 2014 appellant requested a review of the written record.

In a December 28, 2014 statement, appellant explained that, prior to the incident, he had a similar incident, happen to him approximately two years earlier.² He explained that it was difficult dealing with his “previous assault just to have another similar incident transpire so soon afterwards.” Appellant indicated that it was “extremely depressing and stressful” dealing with his emotions on a daily basis and also challenging when he was trying to suppress his fears of being attacked again.

In a December 8, 2014 treatment note, Dr. Valentin Berman, a Board-certified psychiatrist and neurologist, diagnosed post-traumatic stress disorder as a result of an incident that happened while he was working as a mail carrier on October 20, 2014. He placed appellant on medical leave until December 31, 2014.

By decision dated May 26, 2015, an OWCP hearing representative affirmed the December 15, 2014 decision. He found that, while it was accepted that a person with a gun in his pocket approached him while he was in the performance of duty, the medical evidence was insufficient to show that this caused an injury.

² Appellant provided a copy of a police incident report from the January 12, 2012 incident. He also provided a copy of a notice advising that his appearance was required as a witness on December 22, 2014.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,³ including that he or she is an “employee” within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.⁴ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁶

Causal relationship is a medical issue⁷ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁸ must be one of reasonable medical certainty⁹ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹⁰ Medical conclusions unsupported by rationale are of little probative value.¹¹ Medical conclusions based on inaccurate or incomplete histories are also of little probative value.¹²

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *R.C.*, 59 ECAB 427 (2008).

⁵ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁸ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁹ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁰ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹¹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

¹² *James A. Wyrick*, 31 ECAB 1805 (1980) (physician’s report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

ANALYSIS

Appellant alleged an emotional condition as a result of stress related to the accepted incident in which he was exposed to an individual with a gun while performing his duties as a city carrier on October 29, 2014. The question presented is whether appellant suffered an injury on October 29, 2014, as a result of this incident. Such a question calls for medical opinion evidence from a physician.

Appellant's psychiatrist and neurologist, Dr. Berman, in his December 8, 2014 treatment note, diagnosed post-traumatic stress disorder as a result of an incident that happened while he was working as a mail carrier on October 20, 2014. He placed appellant on medical leave until December 31, 2014. Dr. Berman's description of the incident is far too brief to establish that he was basing his opinion on a complete and accurate history.¹³ He did not list any details of the accepted incident. Further, Dr. Berman did not support his opinion with sound medical reasoning. He simply diagnosed post-traumatic stress disorder without discussing the signs, symptoms, or complaints which established the diagnosis in appellant's case or how the accepted incident caused or contributed to the disorder. For these reasons, the Board finds that Dr. Berman's opinion is of diminished probative value and does not establish the required element of causal relationship. The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty.

On appeal, appellant argues that he has established his claim. However, as found above, the medical evidence is insufficient to establish causal relationship.

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 that the accepted work incident on October 29, 2014 caused an injury. The medical opinion evidence fails to establish causal relationship.

¹³ See *Wyrick, id; Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value.

ORDER

IT IS HEREBY ORDERED THAT the May 26, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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