United States Department of Labor
Employees' Compensation Appeals Board

S.R., Appellant	)	
and	)	**Docket No. 18-0488**
	)	**Issued: August 28, 2018**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Memphis, TN, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 5, 2018 appellant filed a timely appeal from a December 19, 2017 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 to consider the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on September 21, 2017, as alleged.

FACTUAL HISTORY

On October 21, 2017 appellant, then a 61-year-old automation technology specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 21, 2017 he developed dizziness

[1] 5 U.S.C. § 8101 *et seq.*

and pain in his mid-section while removing a monitor while in the performance of duty. He noted blood in his urine for the next three days. Appellant provided a statement from a witness noting that on September 21, 2017 he and appellant were attempting to move a monitor from its connecting arm when appellant began to breathe heavily, stopped working, and sat down. He then reported that he experienced shortness of breath and dizziness.

In a November 8, 2017 development letter, OWCP requested additional factual and medical evidence in support of appellant's traumatic injury claim. It afforded appellant 30 days for response.

Dr. Leslie R. McGowan, a Board-certified urologist, examined appellant on October 18, 2017 due to hematuria. He noted that, after lifting an object weighing 80 pounds, appellant saw blood in his urine for approximately three days. Appellant also reported dizziness and bladder discomfort. Dr. McGowan noted that appellant had a history of prostate cancer and had a prostatectomy approximately a year prior. On October 23, 2017 appellant underwent an abdominal computerized tomography (CT), which demonstrated hepatic steatosis with stable left adrenal adenoma, stable colonic diverticulitis, and previous prostatectomy. On November 10, 2017 Dr. David A. Gubin, a Board-certified urologist, performed a cystoscopy and removal of two stitches at appellant's bladder urethral anastomosis. Dr. McGowan provided a November 16, 2017 note indicating that he was treating appellant for urology issues.

By decision dated December 19, 2017, OWCP denied appellant's traumatic injury claim, finding that he had not established that the employment incident occurred as alleged on September 21, 2017 and that he had not submitted medical evidence to substantiate a diagnosed medical condition causally related to the claimed employment incident. As such, it found that appellant had not established an injury as defined under FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish 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 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 an occupational disease.[3]

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

[2] *Id*.

[3] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a *prima facie* case has been established. However, 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.[4]

Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5] Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[6] 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.[7]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury due to a September 21, 2017 employment incident.

Appellant claimed that he sustained dizziness, shortness of breath, and experienced midsection pain on September 21, 2017 while moving a monitor, in the performance of his federal employment duties.

As noted above, to establish the fact of injury the employee must first submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[8] The Board finds that appellant has established that an employment incident occurred on September 21, 2017. Appellant provided a witness statement supporting that appellant was involved in moving a monitor on September 21, 2017 and that he reported distress during this activity. He also reported the date and mechanism of the claimed

[4] *L.F.*, Docket No. 17-0689 (issued May 9, 2018).

[5] *A.D., supra* note 3; *T.H.*, 59 ECAB 388 (2008).

[6] *L.F., supra* note 4.

[7] *A.D., supra* note 3; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *L.F., supra* note 4; *Julie B. Hawkins*, 38 ECAB 393 (1987).

September 21, 2017 injury in a consistent manner to OWCP and medical practitioners. Appellant sought medical care for his claimed condition on October 18, 2017. The Board therefore finds that there are no inconsistencies in the evidence which would cast serious doubt upon the validity of appellant's claim and his account of the September 21, 2017 incident at work is not refuted by strong or persuasive evidence.[9]

The Board further finds that, although appellant has established a September 21, 2017 employment incident, he has not submitted rationalized medical evidence sufficient to establish an injury causally related to the September 21, 2017 employment incident.[10]

Appellant submitted medical treatment notes from Dr. McGowan, dated October 18, 2017, which noted that, after lifting an object weighing 80 pounds, appellant saw blood in his urine for approximately three days. He also reported dizziness and bladder discomfort. Dr. McGowan did not provide any discussion or opinion as to whether the lifting incident caused or was related to appellant's hematuria. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship and; therefore, the submission of this report does not establish appellant's claim for a September 21, 2017 employment injury.[11] The remainder of the medical evidence of record does not mention the September 21, 2017 employment-related lifting incident and cannot establish appellant's claim.[12] For these reasons, appellant has not met his burden of proof to establish an injury due to the September 21, 2017 employment incident.

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 established that the September 21, 2017 employment incident occurred, as alleged. However, appellant has not established an injury causally related to the accepted September 21, 2017 employment incident.

[9] *Id.*

[10] *L.F., supra* note 4; *D.R.*, Docket No. 16-0528 (issued August 24, 2016)

[11] *See L.F., supra* note 4; *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

[12] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2017 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: August 28, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board