United States Department of Labor
Employees' Compensation Appeals Board

L.D., Appellant	)	
and	)	**Docket No. 19-0039**
	)	**Issued: May 7, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Capitol Heights, MD, 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 October 5, 2018 appellant filed a timely appeal from a July 12, 2018 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.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained an injury on May 14, 2018 in the performance of duty, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the July 12, 2018 decision, OWCP received additional evidence and appellant submitted evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On June 1, 2018 appellant, then a 43-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 14, 2018 he injured his neck when he tripped and fell while he was being chased by a dog while in the performance of duty. He related the specific address where he fell and noted that the incident occurred at 1:30 p.m. On the reverse side of the claim form the employing establishment indicated that appellant was injured in the performance of duty and had been transported by ambulance to a hospital for surgery.

In a development letter dated June 11, 2018, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. It provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the requested information.

Appellant submitted hospital discharge and follow-up instructions dated May 14 and 20, 2018. Neither document was signed.

In a physical therapy report dated May 25, 2018, Emmanuel Moses, a physical therapist, noted a diagnosis of other traumatic nondisplaced spondylolisthesis of fifth cervical vertebra.

By decision dated July 12, 2018, OWCP denied appellant's traumatic injury claim finding that the evidence submitted was insufficient to establish that the event occurred as he described, and that he had not submitted medical evidence to establish a diagnosed medical condition causally related to the alleged employment incident. It concluded, therefore, that appellant had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA,[3] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] 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.[5] To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that a medical condition relates to the employment incident.[6]

An employee has the burden of proof to establish the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. 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, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action.[7] An employee has not met his or her burden of proof to establish 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 sufficient doubt on an employee's statement in determining whether a *prima facie* case has been established. 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.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.[10] 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.[11]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that the May 14, 2018 employment incident occurred in the performance of duty, as alleged. However, the Board also finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted May 14, 2018 employment incident.

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[6] *Id.*

[7] *T.M.*, Docket No. 17-1194 (issued February 4, 2019); *see Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

[8] *T.M.*, *id.*; *see Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

[9] *E.J.*, Docket No. 18-0207 (issued July 13, 2018); *A.D.*, 58 ECAB 149 (2006).

[10] *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2008).

[11] *P.R.*, Docket No. 18-0737 (issued November 2, 2018).

On his claim form appellant alleged that on May 14, 2018 he sustained a neck injury when a dog chased him and he tripped and fell while in the performance of duty. He related the specific address and time of the incident. On the reverse side of the claim form the employing establishment noted that appellant was injured in the performance of duty and had been transported to a hospital. In its July 12, 2018 decision, OWCP related that appellant had not submitted sufficient evidence to establish that the event occurred as he described, and noted that appellant had not responded to a questionnaire in order to substantiate the factual portion of his claim. However, the Board finds that the evidence does not contain inconsistencies sufficient to cast serious doubt on appellant's version of the occurrence of the employment incident. As noted, 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 and persuasive evidence.[12] The Board finds that appellant's allegations of sustaining a neck injury due to falling after being chased by a dog have not been refuted by strong or persuasive evidence and there are no inconsistencies to cast doubt on his version of the employment incident.[13] Therefore, the Board finds that appellant has met his burden of proof to establish that this incident occurred in the performance of duty on May 14, 2018, as alleged.

In response to OWCP's June 10, 2018 development letter, appellant submitted unsigned hospital discharge and follow-up instructions dated May 14 and 20, 2018. Regarding unsigned medical reports, the Board has explained that it is unknown whether the author of the report is a physician. Therefore, as the Board has held, a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.[14] Thus, these reports are of little probative value to establish appellant's claim.

Appellant submitted a physical therapy report dated May 25, 2018 from Mr. Moses. However, physical therapists are not considered physicians as defined under FECA and thus their reports do not constitute competent medical evidence.[15]

The record before the Board also does not contain rationalized medical opinion evidence establishing that appellant's alleged condition was causally related to the accepted May 14, 2018 employment incident. OWCP advised appellant that it was his responsibility to provide a comprehensive medical report, which described his symptoms, test results, diagnosis, history of treatment, and a physician's opinion, with medical reasons, on the cause of his conditions. Appellant has not submitted sufficient medical documentation in response to OWCP's request.

[12] *See supra* note 7.

[13] *C.V.*, Docket No. 15-0615 (issued September 13, 2016).

[14] *See L.M.*, Docket No. 18-0473 (issued October 22, 2018).

[15] 5 U.S.C. § 8101(2); *J.L.*, 17-1207 (issued December 8, 2017); *David P. Sawchuck*,, 57 ECAB 316, 322 n.11 (2006)

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.[16] Thus, the Board finds that appellant failed to meet his burden of proof.

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 met his burden of proof to establish an incident in the performance of duty on May 14, 2018, as alleged. However, the Board also finds that he has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted May 14, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: May 7, 2019
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

[16] *See B.A.*, Docket No. 17-1130 (issued November 24, 2017); *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).