

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

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R.M., Appellant)	
)	
and)	Docket No. 12-1448
)	Issued: December 4, 2012
U.S. POSTAL SERVICE, POST OFFICE,)	
Hartford, CT, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 27, 2012 appellant filed a timely appeal from a January 4, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. 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 appellant met her burden of proof to establish that she sustained an eye injury in the performance of duty on February 24, 2011.

FACTUAL HISTORY

On February 25, 2011 appellant, then a 53-year-old BMET employee, filed a traumatic injury claim (Form CA-1) alleging that on February 24, 2011 she sustained a face and front injury after a coworker flung wet debris in her face at 11:43 p.m. The employing establishment

¹ 5 U.S.C. § 8101 *et seq.*

controverted the claim. Appellant notified her supervisor and first received medical care on February 25, 2011.

In a March 2, 2011 electronic correspondence, appellant's supervisor, Mariamma Paulose, reported that on February 24, 2011 all of the work was finished in her unit and she went home around 11:30 p.m. At approximately 11:45 p.m. after Ms. Paulose had left, a clerk came inside to end his tour at midnight. Appellant was inside talking to another female coworker when the clerk saw appellant yawning and told her to "wake up," shaking his umbrella towards her from about 10 feet away. Ms. Paulose stated that both parties informed her that this occurred and speculated that the clerk's actions possibly caused a few drops of water to fall on appellant's shirt. She further noted that appellant did not seek immediate medical attention despite being the safety captain and medical emergency person in the unit. The next day on February 25, 2011, appellant informed Jill Lindsey, manager, about what had happened. Ms. Lindsey informed Ms. Paulose about the situation who took appellant to seek emergency treatment on that date.

By letter dated March 7, 2011, the employing establishment controverted the claim. It found that the statement by appellant's supervisor casted doubt upon the validity of the claim. The employing establishment further noted that an eye condition results in immediate irritation and that appellant made no mention of an eye irritation or condition to her supervisor until 24 hours after the alleged incident. It stated that it was doubtful that she would wait 24 hours before seeking medical attention for an eye condition given the seriousness of this type of injury.

By letter dated March 15, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. It requested additional factual and medical evidence and provided her 30 days to respond.

In a February 25, 2011 emergency room (ER) report, Dr. Sachin R. Parekh, Board-certified in family medicine, reported that appellant arrived at the ER stating that a coworker accidentally threw a towel with wet debris towards her the previous night and some of this fluid had gotten into her eye. He noted that appellant's eye was minimally pink with no reports of blurred vision. Dr. Parekh diagnosed corneal abrasion of the right and left eye, prescribed tobramycin drops and released appellant to follow up at St. Francis Occupational Health if her symptoms continued.

In a March 1, 2011 medical report, Dr. George Moore, Board-certified in occupational medicine, reported that appellant was a postal worker who injured both eyes at work on February 24, 2011 when another employee shook a wet umbrella towards her face. Appellant stated that she was stunned and her face started itching after the incident occurred. She attempted to rinse her face and eyes but the itching and irritation continued, causing her to seek emergency treatment on February 25, 2011 when she was diagnosed with corneal abrasion. Upon physical examination, Dr. Moore noted mild conjunctival injection in both eyes with no corneal defects noted or foreign bodies seen. He diagnosed bilateral corneal abrasion, prescribed gentamicin eye drops and recommended that appellant remain off duty until evaluated by a specialist.

In a March 4, 2011 medical note, Dr. Kevin Dinowitz, a Board-certified ophthalmologist, reported that a coworker shook a wet umbrella at appellant on February 24, 2011 which exposed

her to debris and irritated her eyes, causing her to go to the ER the next day. He recommended that appellant return to regular duty on March 7, 2011.

By decision dated April 15, 2011, OWCP denied appellant's claim finding that the evidence did not establish that she sustained an injury and also failed to establish that the incident occurred as alleged. It noted that she gave conflicting stories regarding the alleged February 24, 2011 employment incident and failed to respond to OWCP's March 15, 2011 development letter requesting a statement detailing what actually occurred on that date.

On May 5, 2011 appellant requested an oral hearing before the Branch of Hearings and Review. In her narrative statement, she reported that, on February 24, 2011, she was doing a walk through at the end of her shift to make sure that everything was locked on her side of the unit. Appellant stated that she was standing by the wall when a coworker came in and flung wet debris towards her from his umbrella, hitting her face and front of body. She stated that she immediately informed Steven Joseph, a supervisor, about what had happened, telling him that it was unacceptable and appalling. Appellant stated that her face had already begun feeling irritated and itchy and she attempted to irrigate her face and eyes with water. She stated that she could not think clearly and attempted to look for Mr. Joseph, e-mailed Ms. Lindsey and e-mailed Ms. Paulose who had already left for the day. Appellant left work and telephoned Ms. Lindsey a few hours later explaining what had happened to her. She sought immediate emergency treatment the next day for irritation to her eyes.

In a February 25, 2011 witness statement, Cynthia Cook, appellant's coworker, reported that on February 24, 2011 at approximately 11:40 p.m. she was talking to appellant when a man with an umbrella came and shook it in front of her. Water from the umbrella splashed on appellant's face causing her to use both hands to wipe her face clean.

In a March 1, 2011 progress note, Dr. Moore stated that appellant sought treatment after a coworker shook a wet umbrella in her face on February 24, 2011. In an April 7, 2011 medical report, he stated that she was treated on March 1, 2011 for a work-related bilateral eye injury. Appellant was first treated at St. Francis Hospital on February 25, 2011 and diagnosed with corneal abrasions. Dr. Moore noted that, although her abrasions had healed by the time he examined her, appellant was still complaining of itching and foreign body sensation and was referred to an ophthalmologist.

In an April 27, 2011 medical report, Dr. Ronald Kimmel, Board-certified in internal medicine, reported that appellant sought follow-up treatment for post-traumatic stress disorder and that her condition had improved. Upon physical examination, he noted no eye symptoms.

At the October 12, 2011 hearing, Ms. Cook provided witness testimony and stated that, on February 24, 2011, she was talking to appellant when another coworker walked by with a wet umbrella and flung it in appellant's face. She stated that he shook the umbrella once and this resulted in a lot of water on appellant's face, causing appellant to wipe her face immediately after it happened. Ms. Cook stated that she asked appellant if she was alright and appellant responded that she was very upset that he would do something like that. The hearing representative asked Ms. Cook if appellant reported anything other than being upset immediately after the incident. Ms. Cook stated that she did not.

During the hearing, appellant testified that she was talking to Ms. Cook on February 24, 2011 when a coworker came by and flung a wet umbrella in her face. She stated that, at the time, it was raining extremely hard outside. Appellant was shocked and wiped her face, realizing after that debris had gone into her eye. She stated that she spoke to Mr. Joseph who walked by immediately after the incident happened and explained to him the situation. Appellant stated that Mr. Joseph witnessed the wetness on her face and shirt. She then proceeded to rinse and irrigate her face and eyes. Appellant further stated that she felt uncomfortable after what had happened, went home and called and e-mailed Ms. Lindsey to inform her of the situation. She stated that her eyes continued to bother her overnight. About 12 hours later, appellant reported to work and after speaking with Ms. Lindsey, Ms. Paulose took her to seek emergency medical treatment. She testified that her physician diagnosed bilateral corneal abrasion and that she was seeking treatment for post-traumatic stress disorder due to the February 24, 2011 employment incident. Appellant further argued that management never investigated the situation and Ms. Paulose's own statement corroborated her story that a coworker shook his wet umbrella in her face. The record was held open for 30 days.

By decision dated January 4, 2012, the hearing representative affirmed OWCP's April 15, 2011 decision finding that the evidence did not establish that the incident occurred as alleged. It also noted that appellant failed to establish a diagnosed medical condition causally related to the alleged employment incident.

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, that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

In order 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.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event,

² Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

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

⁴ Elaine Pendleton, *supra* note 2.

incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.⁵ Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.⁶

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁷

To establish a causal relationship between the condition, 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.⁸ The opinion of the physician must be based on 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. 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.⁹

ANALYSIS

The Board finds that appellant failed to establish that she sustained bilateral corneal abrasion in the performance of duty on February 24, 2011.

Appellant must establish all of the elements of her claim in order to prevail. She must prove her employment, the time, place and manner of injury, a resulting personal injury and that her injury arose in the performance of duty. In its January 4, 2012 decision, OWCP found that appellant did not establish that the incident occurred at the time, place and in the manner alleged. The Board finds, however, that the evidence of record is sufficient to establish that the February 24, 2011 incident occurred, as alleged.

⁵ See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). See *Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

⁶ *Supra* note 4.

⁷ *Betty J. Smith*, 54 ECAB 174 (2002).

⁸ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁹ *James Mack*, 43 ECAB 321 (1991).

Appellant alleged that she sustained an injury at work on February 24, 2011 when a coworker shook a wet umbrella at her, causing water and debris to splash on her face. Her Form CA-1 noted that a coworker flung wet debris in her face and her statements have been consistent in indicating that this coworker shook a wet umbrella towards her. Appellant also provided a witness statement from Ms. Cook who stated that this coworker shook his wet umbrella at appellant. Ms. Cook also testified at the October 12, 2011 hearing with respect to witnessing this incident, stating that appellant's face was wet, causing her to wipe the wetness away with her hands. Appellant provided one basic account of the mechanism of the employment incident and reported the incident to a supervisor that same evening, as well as upon her arrival to work the next morning. Moreover, she sought medical treatment and filed a Form CA-1 the following day. Not only have her statements been consistent, but appellant has also corroborated her allegations through Ms. Cook's narrative statement and testimony.

The employing establishment controverted the claim but acknowledged that appellant's coworker shook his wet umbrella toward her. In a March 2, 2011 electronic correspondence, Ms. Paulose stated that both parties informed her of the same facts.

The Board notes that, although Dr. Parekh's February 25, 2011 emergency room report stated that a coworker accidentally threw a towel with wet debris towards appellant and some of this fluid got into her eye, the factual evidence of record overwhelmingly and consistently states that appellant's coworker shook a wet umbrella towards her. The Board finds that, given the above-referenced evidence, appellant has alleged with specificity that the incident occurred at the time, place and in the manner alleged.¹⁰

In a February 25, 2011 emergency room report, Dr. Parekh noted that appellant's eye was minimally pink with no reports of blurry vision and diagnosed bilateral corneal abrasion. In a March 1 and April 7, 2011 medical report, Dr. Moore reported that appellant was a postal worker who injured both eyes at work on February 24, 2011 when another employee shook a wet umbrella in her face. He noted mild conjunctival injection in both eyes with no corneal defects or foreign bodies seen upon physical examination. Dr. Moore diagnosed bilateral corneal abrasion.

The Board finds that the medical evidence of record establishes a diagnosis of bilateral corneal abrasion. Given that appellant has established a diagnosed condition, the question becomes whether the February 24, 2011 incident caused this condition. She must submit rationalized medical evidence to establish that her diagnosed medical condition is causally related to the accepted February 24, 2011 employment incident.

While the reports of Dr. Parekh and Dr. Moore establish a diagnosis of bilateral corneal abrasion, they are not rationalized as to the issue of causal relation. Dr. Parekh's February 25, 2011 report contains an incorrect history of the employment incident, noting that appellant's coworker threw a wet towel with debris towards her. Moreover, his report did not reflect Dr. Parekh's own medical opinion on the cause of appellant's injury, rather than those of appellant. While Dr. Moore provided an accurate account of the February 24, 2011 employment incident, he failed to provide any explanation regarding how the incident accepted in this case

¹⁰ See *Willie J. Clements*, 43 ECAB 244 (1991).

caused or contributed to appellant's bilateral corneal abrasion. The physicians did not provide a detailed discussion of appellant's medical history, merely recounted the incident as described by her, did not determine that her condition was work related and did not offer a rationalized opinion on the issue of causal relationship.¹¹ Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹² The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹³ The reports of Dr. Parekh and Dr. Moore do not meet that standard and are insufficient to meet appellant's burden of proof.

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Dinowitz's March 2, 2011 report merely noted that a coworker shook a wet umbrella at appellant on February 24, 2011 which exposed her to debris and irritated her eyes but failed to diagnose a clear medical condition. Dr. Kimmel's April 27, 2011 medical report is of no probative value as he noted no eye symptoms and failed to provide a diagnosis other than post-traumatic stress disorder. Thus, the reports of Dr. Dinowitz and Dr. Kimmel do not constitute probative medical evidence because they fail to provide a firm medical diagnosis and do not adequately explain the cause of appellant's eye injury.¹⁴

While appellant has established that the February 24, 2011 incident occurred as alleged, she has failed to establish a causal relationship between that incident and her bilateral corneal abrasion. Thus, she has failed to establish her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her bilateral corneal abrasion is causally related to the accepted February 24, 2011 employment incident.

¹¹ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹² *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ See *Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁴ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

ORDER

IT IS HEREBY ORDERED THAT the January 4, 2012 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: December 4, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board