

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On January 5, 2010 appellant, then a 49-year-old laundry supervisor, filed a traumatic injury claim, alleging that she suffered pain in her right hand, right ankle, and between her shoulder blades when she lost her footing and fell to the floor at 10:30 a.m. that day. The employing establishment advised that the fall occurred during a break in a training session and that she attended training for the rest of the day.

A CA-16 form, authorization for examination and treatment, dated January 5, 2010, noted complaints of pain to right hand, right ankle, and radiating pain between the shoulder blades and arms due to a fall on the floor at work. Appellant submitted claims for intermittent compensation beginning on February 23, 2010 to attend physical therapy and doctor's appointments. By letter dated April 2, 2010, OWCP informed her of the evidence needed to support her claim.

In a January 5, 2010 report, C. West, an employing establishment physician's assistant (PA), noted that appellant reported for treatment at 10:30 a.m. for complaints of right hand, arm and neck pain, following a slip and fall at work. The PA provided physical examination findings of full range of motion in the hands, wrists, arms, and shoulders with good muscle strength and intact sensation, and diagnosed muscle strain of the right arm and neck and contusion of the right hand. In a treatment note dated January 5, 2010, Cathy Bracher, a nurse practitioner, reported the history of injury that occurred about seven hours previously and appellant's complaints of severe neck and shoulder pain. Physical examination demonstrated decreased range of motion of the neck with full range of motion of the shoulders, elbows, and wrists, 5/5 grip strength and palpable tenderness throughout both scaphoid regions. Ms. Bracher advised that cervical spine x-ray demonstrated complete loss of lordotic curve and diagnosed general myofascial pain and muscle spasms, status post fall. On a state workers' compensation form, she provided physical restrictions. In a January 6, 2010 treatment note, Ms. Bracher advised that appellant was seen for a work-related injury when she fell at work and that her pain and stiffness had increased, especially in the neck and shoulder girdle area. Cervical spine range of motion was full on physical examination. Ms. Bracher again diagnosed myofascial pain and advised that appellant could not work.

In a January 11, 2010 treatment note, Dr. Iftikhar Ahmed, Board-certified in family medicine, noted that appellant was seen for a workers' compensation recheck and reported her complaints of upper and lower back pain. Back examination demonstrated slight discomfort with movement. Dr. Ahmed diagnosed upper and lower back pain, status post fall, acute and chronic. In an attached duty status report that identified January 5, 2010 as the date of injury, he diagnosed back sprain due to a fall and advised that appellant could return to work, with restrictions to her physical activity. In treatment notes dated January 15 to February 16, 2010, Dr. Dan W.T. Peters, a Board-certified family physician, also noted that appellant was seen for a workers' compensation recheck. He reported her complaints of continued pain and discomfort that was slowly improving and advised that she could continue light duty. On duty status reports Dr. Peters diagnosed back, neck, and shoulder strains and advised that the conditions were due to the January 5, 2010 injury. On March 5, 2010 he advised that appellant had mild discomfort in the thoracic, trapezius and neck regions with full shoulder range of motion. Dr. Peters reiterated

his diagnoses and advised that she could resume full duty, including firing guns. In a form report dated April 22, 2010, Cathy Tilbury, a nurse practitioner, referred appellant to orthopedics.

By decision dated April 30, 2010, OWCP denied the claim. Appellant timely requested a review of the written record. In a September 28, 2010 decision, an OWCP hearing representative affirmed the April 30, 2010 decision. He found that the January 5, 2005 slip and fall occurred but that the medical evidence did not establish a causal relationship between the claimed condition and the January 5, 2010 incident.

On November 2, 2010 appellant requested reconsideration. She submitted duplicates of evidence previously of record, and an acceptance of a claim, adjudicated by OWCP under file number xxxxxx606 that was accepted on September 8, 2005 for aggravation of lumbar radiculopathy. Appellant also submitted Ms. Bracher's treatment notes dated January 5 and 6, 2010, now cosigned by Dr. Peters. In a merit decision dated February 3, 2011, OWCP denied modification of the prior decisions.

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 timely filed within the applicable time limitation period 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 are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.²

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.³ To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁴

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ Rationalized medical evidence is medical

² Gary J. Watling, 52 ECAB 278 (2001).

³ 20 C.F.R. § 10.5(ee); Ellen L. Noble, 55 ECAB 530 (2004).

⁴ Gary J. Watling, *supra* note 2.

⁵ Jacqueline M. Nixon-Steward, 52 ECAB 140 (2000).

evidence which includes a physician's rationalized medical 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.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

ANALYSIS

The Board finds this case is not in posture for decision. The evidence supports that the January 5, 2010 employment incident occurred as alleged. The Board also finds that the medical evidence submitted by appellant generally supports that this incident caused a medical condition.

The medical evidence most contemporaneous with the January 5, 2010 slip and fall at work includes an employing establishment treatment note signed by C. West, a PA, and also reports dated January 5 and 6, 2010 from Ms. Bracher, a nurse practitioner. Nurses and physicians' assistants are not "physicians" as defined under FECA, and their opinions are of no probative value.⁸ However, Ms. Bracher's reports dated January 5 and 6, 2010 were cosigned by Dr. Peters, and notes by a physician's assistant or nurse practitioner will be considered probative evidence if cosigned by a physician.⁹

The January 5, 2010 treatment note reported the history of injury, appellant's complaints of severe neck and shoulder pain, provided physical examination findings, and diagnoses of general myofascial pain and muscle spasms, status post fall. The January 6, 2010 note advised that appellant was seen following a fall at work because her pain and stiffness had increased, especially in the neck and shoulder girdle area. Appellant was again diagnosed with myofascial pain. The record contains additional reports from Dr. Ahmed and Dr. Peters dated January 11 to February 16, 2010 in which the physicians noted that appellant was seen for a workers' compensation recheck and referenced the January 5, 2010 incident. The physicians provided physical examination findings and diagnosed back, neck and shoulder strains.

Although these reports are not sufficiently rationalized to discharge appellant's burden of proof establishing that an injury occurred on January 5, 2010 they stand uncontroverted in the

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁸ *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

⁹ *See Larry A. Williams*, Docket No. 01-1161 (issued September 12, 2002).

record and may not be completely disregarded by OWCP.¹⁰ It merely means that their probative value is diminished.¹¹

It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹² The case shall therefore be remanded to OWCP. On remand, OWCP shall refer appellant, an updated statement of accepted facts, and the medical evidence of record to an appropriate Board-certified specialist for an examination, diagnosis and a rationalized opinion as to whether appellant sustained an injury on January 5, 2010 and, if so, if she had any concurrent disability for work on or after that date. After this and such further development deemed necessary, OWCP shall issue an appropriate decision.¹³

CONCLUSION

The Board finds this case is not in posture for decision regarding whether appellant sustained injury on January 5, 2010.

¹⁰ *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *Shirley A. Temple*, 48 ECAB 404 (1997).

¹² *See Jimmy A. Hammons*, 51 ECAB 219 (1999).

¹³ The Board notes that appellant submitted evidence with her appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record that was before OWCP at the time it issued its final decision. 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2011 decision of the Office of Workers' Compensation Programs be set aside and the case remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: November 23, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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