

a compressed right C7 nerve root as a result of shifting convertible tanks on a ship at work. He stopped work on November 20, 2009.

By letter dated July 6, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit medical evidence, including a rationalized opinion from an attending physician which described a history of injury and provided dates of examination and treatment, findings, test results, a diagnosis together with medical reasons on how the October 1, 2009 incident caused or aggravated the claimed injury.

In a July 14, 2010 letter, the employing establishment controverted appellant's claim, contending that the evidence failed to establish that he sustained an injury in the performance of duty as alleged.

In a medical summary form dated November 18, 2009, Dr. Sohaib A. Kureshi, a Board-certified neurosurgeon and an employing establishment physician, advised that appellant had a cervical herniated nucleus pulposus at C6-7. He further advised that appellant was not fit for sea duty. Dr. Kureshi indicated that authorization for surgery to treat the diagnosed condition was pending.

In an August 10, 2010 decision, OWCP denied appellant's claim. It accepted that the October 1, 2009 incident occurred as alleged, but the medical evidence was insufficient to establish an injury causally related to the employment incident.²

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 applicable time limitation; that an injury was sustained while 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.⁵

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

² Following the issuance of OWCP's August 10, 2010 decision, it received additional evidence. On appeal, appellant has submitted new evidence. The Board cannot consider evidence that was not before OWCP at the time of the final decision. See 20 C.F.R. § 501(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

actually experienced the employment incident or exposure, which is alleged to have occurred.⁶ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁷

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁹ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹⁰

ANALYSIS

OWCP accepted that appellant shifted convertible tanks on a ship on October 1, 2009 while working as a pumpman. The Board finds that the medical evidence of record is insufficient to establish that his cervical condition was caused or aggravated by the October 1, 2009 employment incident.

The sole medical evidence of record on appeal consists of Dr. Kureshi's November 18, 2009 medical summary form. Dr. Kureshi diagnosed cervical herniated nucleus pulposus at C6-7 for which appellant was awaiting authorization to undergo surgery and advised that he was unfit for sea duty, Dr. Kureshi did not, however, offer any explanation as to how shifting of convertible tanks caused or contributed to appellant's cervical condition and disability for work. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹¹ As noted, part of appellant's burden of proof includes the submission of medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by him.¹² Dr. Kureshi's November 18, 2009 report did not explain how the October 1, 2009 employment incident caused or aggravated appellant's diagnosed condition. Appellant failed to establish his claim.

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁷ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁸ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

⁹ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Charles E. Evans*, 48 ECAB 692 (1997).

¹¹ See *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Willie M. Miller*, 53 ECAB 697 (2002); *J.F.*, Docket No. 09-1061 (issued November 17, 2009). Furthermore, Dr. Kureshi failed to identify any work factors. See *John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition).

¹² See cases cited *supra* note 9.

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a cervical injury causally related to the accepted October 1, 2009 employment incident. Appellant did not 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 failed to establish that he sustained a cervical injury on October 1, 2009, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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