

May 17, 2012. On the claim form, he stated that he was driving a small bus on a bumpy road, with the seat back as far as possible and his back against the wall. The reverse of the claim form noted that appellant stopped work on May 18, 2012.

In a statement received on June 26, 2012, appellant stated that on May 17, 2012 he drove a small bus an hour and a half to reach its destination. When he arrived, his legs were numb and he had pain in his left arm and hand. Appellant stated that he had never operated this particular bus in the past.

In June 5, 2012 treatment notes, Dr. Irene Heldman, a Board-certified internist, indicated that appellant was seen on May 23, 2012. She stated that he reported a prior injury to his neck in 2004 with cervical radiculopathy, as well as a history of low back problems. Appellant reported increased pain after a bumpy bus ride. Dr. Heldman stated that she did not know whether this would be considered a “new injury versus related to prior injury.”

In a form report dated June 5, 2012, Dr. John Steele, a Board-certified orthopedic surgeon, noted that appellant reported pain in his neck and back since being “tossed around” in a van on May 17, 2012. He provided results on examination. Dr. Steele completed a duty status report (Form CA-17) diagnosing lumbosacral and cervical sprain/strain and noted that appellant was totally disabled.

By decision dated July 12, 2012, OWCP denied appellant’s claim for compensation. It found that the medical evidence was insufficient to establish causal relation.

Appellant requested a hearing before an OWCP hearing representative, which was held on November 14, 2012. In a report dated September 21, 2012, Dr. Steele provided a history that appellant was driving a bus on May 17, 2012 for nearly three hours and the bumps in the road “beat his back” during that time. Appellant was first seen on June 5, 2012 with complaints of cervical and low back pain and he discussed appellant’s treatment. Dr. Steele stated, “[Appellant] was injured on May 17, 2012 while driving a bus for the [employing establishment] where he is employed in transportation. Subjective complaints remain neck and back pain. Based on his injury description of being “jolted” for three hours, I do believe his cervical sprain/strain and lumbar sprain/strain are directly related to his work injury on May 17, 2012. His preexisting spinal stenosis was certainly aggravated by the injury.” Dr. Steele opined that appellant would benefit from physical therapy.

By decision dated January 31, 2013, the hearing representative affirmed the July 12, 2012 decision. He found that the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

FECA provides for the payment of compensation for “the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”² The phrase “sustained while in the performance of duty” in FECA is regarded as the equivalent of the commonly found requisite in workers’ compensation law of “arising out of and in the course of

² *Id.* at § 8102(a).

employment.”³ An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.⁴ 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. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁵

OWCP procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.⁶ In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician’s affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.⁷

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁸

ANALYSIS

OWCP accepted that appellant drove a small bus on May 17, 2012 for approximately three hours. The issue is whether the medical evidence is sufficient to establish his neck or low back condition as causally related to the employment incident. Appellant was first seen by Dr. Heldman on May 23, 2012. Dr. Heldman did not provide a rationalized medical opinion. She did not provide a clear diagnosis or a medical opinion, with supporting rationale, on the causal relationship between a diagnosed condition and the employment incident.

Dr. Steele treated appellant on June 5, 2012. In a September 21, 2012 report, he provided an opinion that appellant had employment-related conditions. Dr. Steele stated that a “preexisting spinal stenosis” was certainly aggravated by the incident. In this regard, the Board notes that he did not provide a complete medical history. The record indicates that appellant had

³ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁴ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁵ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (January 2013).

⁷ *Id.*

⁸ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

prior back and neck injuries, and Dr. Steele did not discuss these injuries or explain the nature and extent of any employment-related aggravation.⁹

With respect to the diagnoses of cervical and lumbar sprain/strains, Dr. Steele briefly stated that the conditions were directly related to the May 17, 2012 employment incident. The diagnosis of a sprain/strain requires a supporting opinion on causal relationship. The medical opinion must be supported by medical rationale.¹⁰ As noted, Dr. Steele did not treat appellant until June 5, 2012, did not provide a full medical history, and he provided insufficient medical rationale with respect to his stated conclusion. In the initial June 5, 2012 report, Dr. Steele noted that appellant reported pain since the incident, but this does not explain the issue of causal relationship.¹¹

In the absence of a rationalized medical opinion on causal relationship between appellant's neck or low back condition and the May 17, 2012 employment incident, the Board finds that 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 not established a back or neck injury in the performance of duty on May 17, 2012.

⁹ OWCP procedures note that, when there is a preexisting condition, the physician must provide a rationalized medical opinion that differentiates between the effects of the employment injury and the preexisting condition, explaining the nature of the aggravation and its duration. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(e) (January 2013).

¹⁰ See, e.g., *L.N.*, Docket No. 13-184 (issued April 15, 2013) (neither the diagnosis of lumbar sprain or lumbar disc disease was supported by a rationalized opinion on causal relationship with employment).

¹¹ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (because the employee is symptomatic after an incident is not sufficient to establish causal relationship without supporting rationale).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 31, 2013 is affirmed.

Issued: August 1, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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