

the computer screen of another coworker when the wheels of his chair came from underneath him, causing him to fall to the floor, hitting his left knee and back of head. Appellant indicated that a signed witness statement was to follow. He stopped work and has not returned. The employing establishment challenged the claim. It stated that, while appellant may have fallen out of his chair, its investigation revealed that he could not have hit his head.

In a February 6, 2013 report, Dr. Louis Train, a Board-certified family practitioner, noted that “patient was sitting at work on a wheeled office chair. He leaned to the left and the chair flipped so that the chair and the patient fell to the floor with patient sitting on the chair. His head hit the wall while he was still in his seat. Then, the seat scooted out from under the patient and the left side of his butt hit the floor along with his left knee striking the floor. He injured his head and neck, knee and butt. He was not unconscious and not stunned. At this point, he was pinned against the wall with his head jammed against the wall. He was assisted up.” Dr. Train indicated that appellant presented with injuries to the back of his head and neck as his left knee was not hurting. He noted some minor areas of contusion to the skull with minimal swelling, but not great enough to warrant x-rays. Dr. Train noted surgical scar in the midline of the dorsum of the neck due to previous disc surgery and that he was unable to straighten out appellant’s neck either actively or passively. There was also tenderness of the C1 to T1 paravertebral muscles. Dr. Train also noted minor contusion to the ischial area of the left gluteus. He diagnosed cervical sprain and opined that appellant sustained a traumatic injury at his job on February 6, 2013 when he fell and was jammed against the wall with his head, causing injury to his neck which had previously had cervical disc surgery.

By letter dated May 1, 2013, OWCP advised appellant that the evidence of record was insufficient to support his claim. It requested that he submit factual or medical evidence to address the inconsistencies regarding the mechanism of injury between his statement on the CA-1 form and the physician’s description of the events as to how the injury occurred and address the employer’s challenge to his claim as to the mechanism of injury. Appellant was afforded 30 days to submit the additional evidence.

In a May 3, 2013 letter of clarification, Dr. Train indicated that he saw appellant two hours post injury and there were no symptoms of cerebral concussion and no overt signs; hence, he did not conduct a thorough neurological examination. He stated that symptoms and signs of cerebral concussion can take several days to be apparent after an injury. Dr. Train indicated that appellant’s coworker, who was sitting in her cubicle attending to her job at the computer, stated that she did not see appellant strike his head; however, she would not have been aware of his falling until he struck his head on the wall and could not have seen anything regarding the mechanism of injury. He indicated that, although appellant did not have a large hematoma on his head, he could still get a cerebral concussion due to a severe acceleration/deceleration of the head. Dr. Train indicated that a description of the injury during his initial examination on February 6, 2013 and in the subsequent examination on February 20, 2013 describes how appellant sat in his chair and the chair flew out from under him so that he fell, jamming his back and head against the wall. Appellant indicated that coworkers had to help him out of that jammed position where he was stuck. Dr. Train stated that two weeks post injury, appellant developed severe headaches of a migraine type which did not occur prior to the injury. Appellant also noted his wife’s complaints about his newly acquired forgetfulness. Dr. Train stated that the neurological examination revealed normal reflexes, horizontal nystagmus, abnormal coordination tests and poor short-term memory. He ordered a computerized axial

tomography scan of the brain. Dr. Train opined that, based on the above history, appellant should be approved for cerebral concussion and neck sprain.

In a May 22, 2013 report, Dr. Train diagnosed neck sprain and cerebral concussion causing mild dementia and migraine headaches.

OWCP also received additional documentation from the employing establishment regarding the alleged incident of May 30, 2013.

By decision dated June 19, 2013, OWCP denied the claim on the basis the evidence was insufficient to establish that the event occurred as described. It found that appellant failed to respond to the development questionnaire to establish the factual component of his claim and did not respond to the discrepancies addressed in the employing establishment's conversion of his claim.

On July 18, 2013 appellant requested a telephonic hearing, which was held on January 17, 2014. He testified that he was leaning back in his chair to view his coworker's computer screen when the chair rolled and slipped out from under him causing him to fall on the floor and hit his head on the wall. Appellant noted that he also bumped his knee on the desk as he fell. In response to questioning regarding the employing establishment's investigation and reenactment of the accident which demonstrated that he did not hit his head, appellant explained that he was a tall man, unlike the person used for the reenactment, and stated he did hit his head on the wall. He stated that his coworker did not see the fall as she was looking at her computer, but stated that she saw him on the floor and heard the fall. Appellant indicated that the witness has since passed away and is not able to provide a statement. He acknowledged that he had prior work injuries to his neck and extremities and was working with restrictions from a 1996 injury and was under medical care for the 1996 injury when the new incident occurred. Appellant stated that he sought immediate medical care and reported the injury. He explained that he had bumped his knee, but it did not bother him. Appellant further stated that he had not sustained any subsequent injuries and that he had not returned to work since the injury. Dr. Train testified that he examined appellant on the date of injury and diagnosed a cervical strain which was consistent with appellant's description of the incident. On appellant's second visit, he diagnosed a cerebral concussion based on appellant's symptoms and neurological examination. Dr. Train indicated that appellant still had symptoms of his concussion.

Medical reports from Dr. Train dated February 20, July 31, August 29, September 27 and October 24, 2013, February 26 and March 14, 2014 were received. In the February 20, 2013 report, Dr. Train opined that appellant was unable to work because of his cerebral concussion causing severe migraines and memory loss and the severe neck sprain with limitation of movement of the neck and extreme neck pain. He stated that when appellant fell and was jammed against the wall with his head, he injured his neck which previously underwent cervical disc surgery.

In his July 31, 2013 report, Dr. Train reported the history of injury as appellant sitting in his wheeled office chair at work and, when he leaned to the left, the chair flipped so that he fell to the floor while seated in a partially upturned chair with his back and head having struck the wall and his being pinned against the wall, requiring others help to extricate him from this position. He indicated that appellant was initially diagnosed by him as having a severe neck

sprain but within a couple of weeks was noted to have mild dementia due to a cerebral concussion which occurred when he fell with the chair to the floor. Dr. Train noted that while the physical examination showed only evidence of mild contusion to the head, the sudden acceleration and deceleration injury to the head can cause cerebral concussion. In addition, landing on one's butt in a fall will cause contusion to the lower part of the brain. Dr. Train explained that as the brain strikes the base of the skull it then bounces about within the skull without significant impact to the sides of the skull. He concluded that this was how appellant developed a cerebral concussion with mild dementia without a large noticeable impact to the skull.

In his August 29, 2013 report, Dr. Train stated appellant was sitting in his wheeled office chair at work and leaned to the left and the chair flipped so that he fell to the floor while seated in a partially upturned chair with his back and head having struck the wall and his being pinned against the wall, requiring others to help extricate him from his position. He stated that appellant was diagnosed with severe neck sprain on initial visit and mild dementia due to a cerebral concussion on second visit. Dr. Train explained that the jolt to appellant's brain when his butt hit the floor as well as the head thrown backward to hit the wall caused an acceleration-deceleration injury to the brain, causing a mild concussion without any significant findings of injury to the head itself. He stated that this was not an unusual development.

In his September 27 and October 24, 2013 reports, Dr. Train noted the history of injury as appellant sitting on a chair with wheels and, as he leaned to one side, the chair flipped, causing him to fall to the floor, sitting in the overturned chair with his back and head jammed against the corner of the cubicle where he works. He opined that the sudden acceleration and deceleration to appellant caused a cerebral concussion. Dr. Train also opined that appellant injured his neck and lower back in the fall. He noted that appellant required assistance from coworkers to get him to stand and that his supervisor told him that he needed to go to the doctor. Dr. Train stated he saw appellant within hours of the injury and that it was before lunch. He opined, in those reports as well as in subsequent reports, that the fall at work in which appellant's chair collapsed caused cerebral concussion with dementia, internal derangement of the neck and both shoulders and, consequential to the neck sprain, bilateral thoracic outlet syndrome.

In a February 24, 2014 response, the employing establishment stated that it did not agree with appellant's and Dr. Train's description of how the event occurred. It advised a reenactment of the incident revealed that appellant fell on his left side on the floor and he was not pinned against the wall with his head jammed against the wall as stated by Dr. Train in his February 6, 2013 medical report. The employing establishment provided a picture which demonstrated how a coworker found appellant on the floor on the date of the incident, which showed appellant was not pinned behind the chair. It noted that when appellant leaned to his left, the chair fell to the left. Another picture demonstrated how appellant was trying to get off the floor. The employing establishment agreed appellant fell out of his chair, but asserted he did not hit his head against the wall or floor because he fell sideways to the floor. It also stated that appellant was found by a coworker lying on his side trying to get up; therefore, it asserted appellant was not found pinned against the wall behind him.

By decision dated April 18, 2014, an OWCP hearing representative affirmed the June 19, 2013 decision. The hearing representative found the factual evidence was not sufficient to

support the alleged head trauma and the medical evidence from Dr. Train was insufficient to establish causal relationship as it was based on an inaccurate history of the 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 an 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 In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁷ Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident. 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.⁸

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 at 1143.

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁷ *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone*, *id.* at 356-57.

⁸ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The first component of fact of injury is whether the employment incident occurred as alleged. OWCP accepted that the February 6, 2013 employment incident occurred. It found that while appellant fell out of his chair in the performance of duty, he did not hit his head. Appellant alleged on his CA-1 form and before OWCP's hearing representative that he was leaning back in his chair to view his coworker's computer screen when the chair rolled and slipped out from under him, he fell on the floor and hit his head on the wall. He also claimed he bumped his knee as he fell. There were no witnesses to the actual fall, just the aftermath.

As noted, there were no witnesses to appellant's actual fall. The only witnesses after the fall was the coworker in the next cubicle, who had died by the time of the hearing. In an accident investigation, the employing establishment confirmed that appellant fell out of his chair landing on his left side but found no substantive evidence establishing that he had hit his head on the wall. The February 24, 2014 accident investigation was completed approximately one year after appellant's February 6, 2013 incident. It provided pictures of how a co-worker (unidentified) found appellant on the floor and how he was trying to get up off the floor. Assuming that the unidentified coworker was the same coworker in the next cubicle whom appellant was going to look at the computer screen when his chair wheels came from underneath him and he fell, there is no evidence that the coworker actually saw appellant fall. Furthermore, appellant alleges that he is taller than the person used on the accident reenactment, which would lessen the probative value of a reenactment of his fall. As there are no witnesses to appellant's actual fall and the reenactment of the incident does not appear to be in line with appellant's body stature and frame, the actual results of the reenactment are of little probative value.

Most persuasive is that within two hours after his fall, appellant sought medical attention from Dr. Train. In all reports of record, Dr. Train reported a consistent history of injury: that appellant had leaned back in his chair, that the chair flipped, appellant hit his head on the wall and fell to the floor when the chair moved and his left buttock hit the floor along with his left knee. In his initial report of February 6, 2013 report, Dr. Train indicated that appellant presented with injuries to the back of his head and neck and that his left knee was not hurting. He noted that appellant had some minor areas of contusion to the skull with minimal swelling; that there was tenderness to the C1 to T1 paravertebral muscles and appellant was unable to straighten his neck, which had previous cervical disc surgery, and there was a minor contusion to the ischial area of the left gluteus. Dr. Train opined that those injuries were consistent with the history of injury and his examination findings.

The employing establishment did not dispute that appellant had fallen from his chair during the performance of duty; rather, it disputed that he hit his head. The initial medical evidence, attained two hours postincident, supported injuries to the head, neck, and left buttocks consistent with a fall from a wheeled chair and a head strike. In the absence of any evidence refuting appellant's statement, the Board finds that the February 6, 2013 incident occurred as alleged.

Appellant also submitted medical evidence on the issue of causal relationship between the diagnosed conditions and the February 6, 2013 incident. As a result of the head strike and fall on February 6, 2013, Dr. Train initially diagnosed a cervical sprain. In subsequent reports, Dr. Train opined that the fall and head strike had caused cerebral concussion with dementia,

internal derangement of the neck and both shoulders and, consequential to the neck sprain, bilateral thoracic outlet syndrome. He stated that the acceleration/deceleration of the fall caused appellant's cerebral concussion with dementia and provided an explanation for his opinion.

As appellant has established employment factors which allegedly caused injury, and he has submitted medical evidence in support of his claim, he has established a *prima facie* claim for compensation. While OWCP determined that Dr. Train's medical opinion was based upon an inaccurate history of injury, the Board finds that his medical history as to appellant hitting his head was correct. This case will therefore be remanded for further review of the medical evidence.

CONCLUSION

The Board finds that the evidence supports that the incident occurred as alleged on February 6, 2013. The case is remanded to OWCP for a determination as to whether appellant met his burden of proof to establish that his medical conditions are causally related to the February 6, 2013 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2014 decision of the Office of Workers' Compensation Programs is remanded for further development.

Issued: December 11, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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