

reinjured his left rib when he attempted on his own to flip a full tray of mail onto a postal machine. By decision dated January 28, 2014, the Board affirmed a July 12, 2013 OWCP decision denying appellant's request for reconsideration as it was untimely filed and failed to show clear evidence of error.² The Board found that a review of the case record revealed that no request for reconsideration had been submitted on or about June 26, 2012 as alleged and appellant had failed to submit proof showing that a request had been submitted in a timely manner.

On March 14, 2014 counsel requested reconsideration and contended that neither OWCP nor the Board had read the complete record in this case. He included a copy of a document from the case record proving receipt by OWCP of his June 26, 2012 request for reconsideration on July 5, 2012 well within one year of the last OWCP merit decision dated July 21, 2011.

By decision dated June 12, 2014, OWCP found that the June 26, 2012 request for reconsideration had been in the record. It then performed a merit review of all the evidence. After that merit review, OWCP found that the medical evidence contained in the record failed to establish that the diagnosed rib condition was causally related to the accepted May 30, 2011 employment incident and denied the claim.

The relevant evidence in the record is set forth below.

On May 31, 2011 a South Seminole Hospital report stated that appellant had been seen for left chest pain after hearing a pop after lifting a tray of letters and was diagnosed with a rib fracture and bronchitis. Under assessment, it noted that appellant sustained an employment injury.

A May 30, 2011 chest x-ray interpretation from Orlando Health Department of Radiology/Nuclear Medicine reported normal findings.

In e-mail correspondence dated May 31, 2011, Saverio Marchesio, a supervisor, related that on May 30, 2011 appellant told him he felt a pop in his chest after flipping a tray of mail. Appellant related that a few weeks previously he had been treated in the hospital for rib problems and that he had been told he had cracked or fractured the rib from coughing and bronchitis.

On June 21, 2011 OWCP received a May 31, 2011 discharge note from Orlando Health Department of Radiology/Nuclear Medicine stating that appellant could return to work on June 5, 2011.³

A June 5, 2011 coding summary from Seminole Hospital noted that appellant had been seen in the emergency room on May 30, 2011 and was discharged on May 31, 2011. The diagnosis was not otherwise specified chest pain.

In a June 7, 2011 Florida Workers' Compensation Uniform Medical Treatment/Status Report form, Dr. Olivia Alexander, an examining Board-certified family practitioner, diagnosed

² Docket No. 13-1894 (issued January 28, 2014).

³ The physician's signature is illegible.

chest wall sprain and checked “yes” to the question of whether it was work related. The date of injury was noted as May 30, 2011.

On June 7, 2011 Centra Care Florida Hospital Urgent Care informed appellant that he had been diagnosed with chest wall pain and provided his prescriptions and instructions for care of his injury.

On June 7, 2011 Dr. Alexander reported seeing appellant for rib pain and diagnosed acute chest wall sprain. She related that he sustained a work injury on May 30, 2011 due to lifting mail and noted a prior injury.

In Florida Workers’ Compensation Uniform Medical Treatment/Status Report forms dated June 7, 14, 22, 26, and 28, and July 6, 12, and 20, 2011, Dr. Russell Wheatley, a treating osteopathic Board-certified family practitioner, provided work restrictions. He diagnosed closed rib fracture and checked “yes” to the question of whether the diagnosed condition was employment related. Dr. Wheatley noted the date of injury as May 30, 2011 on the June 7, 28, July 6, 12, and 20, 2011 forms and May 31, 2011 on the June 14, 22 and July 5, 2011 forms.

In a June 14, 2011 Centra Care Florida Hospital Urgent Care note, Dr. Wheatley diagnosed closed unspecified rib fracture(s), noted medicine prescribed for appellant, and provided instructions for care of his injury. Dr. Wheatley also noted that appellant’s blood pressure was high that day, provided a definition of high blood pressure and information on how to lower blood pressure.

In reports dated June 14, 22, July 6, and 20, 2011 Dr. Wheatley reported that appellant sustained a work injury on May 31, 2011 due to lifting a heavy object and that he had a prior injury. A physical examination revealed left lateral chest tenderness. Diagnoses included acute unspecified closed rib fracture(s).

In notes dated dated June 22 and July 6, 2011, Dr. Wheatley diagnosed one rib closed fracture, which he stated was healing nicely. He indicated that appellant was to continue working a modified job and gave a return date for a follow-up visit.

Dr. Wheatley, in a June 28, 2011 report, noted that appellant sustained an injury at work on May 30, 2011 due to lifting a heavy object. He diagnosed an acute closed rib fracture.

In a July 9, 2011 response to questions posed by OWCP, appellant related that he had a similar condition prior to the May 30, 2011 incident. He stated that the prior rib injury was from March 5 to May 5, 2011 and occurred due to coughing attacks and bronchitis.

In July 12 and 20, 2011 reports, Dr. Wheatley related that appellant sustained a work injury to his rib on May 30, 2011 due to lifting a heavy object. He noted that appellant had previously sustained a rib injury.

On July 15, 2011 OWCP also received medical and hospital reports for the period February 28 to May 11, 2011 concerning treatment for a left rib fracture with the relevant evidence regarding left rib fracture set forth below.

A March 7, 2011 progress note by Dr. Dimple Shah, an examining Board-certified internist, reported appellant had been seen for upper respiratory problems. Under assessment, she noted that appellant's chest pain was "likely related to costochondritis versus bruising of the left-sided chest muscles or ribs."

On March 23, 2011 Dr. Shah opined that appellant's chest pain was likely due to costochondritis based on the negative cardiac workup.

On March 29, 2011 Dr. Shah diagnosed acute bronchitis and costochondritis.

On April 4, 2011 appellant was seen by Dr. Shah for his left-sided chest wall pain complaints. Diagnoses included left chest wall pain, leukocytosis, hypertension, and tobacco dependence. Dr. Shah recommended that an x-ray be performed "to rule out any rib fracture as he is extremely tender over the left side of the ribs in the infra-axillary area."

In an April 11, 2011 progress report, Dr. Shah diagnosed seventh left rib fracture based on a bone scan and leukocytosis.

In an April 5, 2011 report, Dr. Antonio Rodriguez, an examining physician Board-certified in critical care medicine, internal medicine, and pulmonary disease, diagnosed atypical chest pain, dyspnea, and hypertension. A computerized tomography (CT) scan revealed a negative rib series. Under history of illness, Dr. Rodriguez reported that appellant had "been dealing with left-sided atypical chest pain" for the past four weeks along with two to three emergency room visits.

In an April 5, 2011 report, Dr. Babak Alex Vakili, a Board-certified internist specializing in cardiology, related that appellant was seen for dyspnea. Under history of present injury, he noted that appellant complained of shortness of breath for the past month and a half and left side rib pain. Diagnoses included dyspnea, controlled hypertension, and abnormal electrocardiogram.

An April 6, 2011 bone scan revealed left posterolateral seventh rib fracture and that "[U]nderlying pathology cannot be excluded, but is unlikely in the absence of other significant findings."

On April 8, 2011 Dr. Shah diagnosed left chest wall pain probably due to seventh rib fracture, leukocytosis, tobacco dependence, and hypertension.

In progress notes dated April 28, 2011, Dr. Shah reported that appellant was seen for a follow-up visit for a left seventh rib fracture. She noted that he was on short-term disability, that the rib injury took several weeks to diagnose, there were many hospitalizations for this injury, and appellant was to return to work on May 1, 2011.

Dr. Shah, in a May 11, 2011 progress note, related that appellant was evaluated for left-sided chest pain and diagnosed left seventh rib fracture.

In a May 31, 2011 discharge summary, electronically signed by Richard Garris, ED RN, appellant's condition was noted as stable.

A July 15, 2011 CT scan reported callus formation on the seventh and ninth rib fractures and nondisplaced eighth rib fracture with no callus formation.

A July 15, 2011 Florida hospital emergency physician report, stated that appellant was seen for shortness of breath, which he attributed to a left rib fracture. Dr. Vicki Kay Friend, an examining Board-certified emergency room physician, examined appellant, provided physical findings, noted a past history of asthma, and a May 30, 2011 left rib fracture. A clinical assesment noted asthma and old rib fracture.

On September 13, 2011 OWCP received a July 12, 2011 x-ray interpretation which diagnosed mild left lung atelectasis which might be the result of splinting caused by trauma.

On July 5, 2012 OWCP received a report from Centra Care Florida Hospital Urgent Care dated July 20, 2011 which diagnosed recurrent rib fracture and a July 12, 2011 report by Dr. Wheatley. On July 12, 2011 Dr. Wheatley related that appellant was seen for a recheck on his rib injury. He stated that the rib injury occurred on May 30, 2011 due to lifting a heavy object at work and there had been a prior injury. Physical examination findings were provided. Dr. Wheatley diagnosed acute closed one rib fracture. Appellant was released to modified work on July 26, 2011.

On May 13, 2013 OWCP received a letter dated January 17, 2013 from appellant's counsel requesting reconsideration. Counsel indicated that a request for reconsideration had been filed on or about June 26, 2012 and submitted a copy of the letter.

By decision dated July 12, 2013, OWCP denied the claim as untimely as no request for reconsideration has been filed. Appellant appealed this decision to the Board which was affirmed on January 28, 2014.

On March 14, 2014 counsel requested reconsideration and provided evidence of a timely request for reconsideration. He argued that the record supported his contention that his request for reconsideration had been timely filed.

By decisin dated June 12, 2014, OWCP denied the claim after reviewing the merits of the case.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 and/or specific condition for which compensation is claimed are causally related to the

⁴ *Supra* note 1.

employment injury.⁵ 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.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁸ An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹⁰ 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 compensable employment factors.¹¹ 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.¹²

ANALYSIS

OWCP accepted that on May 30, 2011 appellant was alone when he went to flip a full tray of mail onto a postal machine. It denied his claim because the record contained no medical opinion explaining how the diagnosed left rib condition had been caused or aggravated by the May 30, 2011 employment incident. The issue on appeal is whether the medical evidence of

⁵ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ See *Elaine Pendleton*, 40 ECAB 1143 (1989); *K.K.*, Docket No. 13-1205 (issued December 13, 2013).

⁸ *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

⁹ P.K., Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ Y.J., Docket No. 08-1167 (issued October 7, 2008); A.D., 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹¹ J.J., Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹² I.J., 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

record is sufficient to establish that the May 30, 2011 employment incident caused or aggravated a left rib condition. The Board finds that appellant failed to submit a rationalized medical report from a physician addressing how the May 30, 2011 incident could have caused or aggravated his claimed rib condition.

Appellant submitted multiple Florida Workers' Compensation Uniform Medical Treatment/Status reports from Drs. Alexander and Wheatley. In a June 7, 2011 report, Dr. Alexander noted an injury date of May 30, 2011 diagnosed chest wall sprain and "checked "yes" to the question of whether the diagnosed condition was causally related to appellant's employment. Dr. Wheatley diagnosed closed rib fracture in the form reports he completed and noted injury dates of either May 30 or 31, 2011. As to the cause of the diagnosed condition, Dr. Wheatley also checked "yes" to the question of whether the diagnosed condition was causally related to appellant's employment. Neither physician provided any rationale explaining why they believed the diagnosed conditions were employment related. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹³ Thus, these reports are insufficient to meet appellant's burden of proof.

Dr. Alexander also completed a report on June 7, 2011 in which she noted that appellant was seen for rib pain and he had sustained an employment injury on May 30, 2011. She noted that there was a history of a prior rib injury without providing any details as to when it occurred. Dr. Wheatley provided multiple reports for the period June 14 to July 20, 2011 in which he diagnosed a left rib fracture which occurred due to appellant lifting a heavy object at work on either May 30 or 31, 2011. The Board finds that while both Drs. Alexander and Wheatley attributed appellant's rib condition to a May 30, 2011 incident, neither physician provided any explanation as to how the May 30, 2011 incident caused or aggravated appellant's rib condition. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹⁴ Thus, these reports are insufficient to meet appellant's burden of proof.

The record also contains a July 20, 2011 report from Centra Care Florida Hospital Urgent Care diagnosing recurrent rib fracture and a July 15, 2011 emergency room report by Dr. Friend noting a history of asthma and May 30, 2011 left rib fracture. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁵ Thus, these reports are insufficient to establish appellant's claim.

¹³ *D.D.*, 57 ECAB 734 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹⁴ *See D.U.*, Docket No. 10-144 (issued July 27, 2010) (medical reports not containing adequate rationale on causal relationship are of diminished probative value and are insufficient to meet the claimant's burden of proof); *Richard A. Neidert*, 57 ECAB 474 (2006); *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).

¹⁵ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *K.W.*, 59 ECAB 271 (2007); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Dennis M. Mascarenas*, *supra* note 9.

Appellant also submitted medical and hospital reports for the period February 28 to May 11, 2011 for the treatment of a left rib fracture. Dr. Shah, in progress notes for the period March 7 to May 11, 2011, diagnosed various conditions including left chest wall pain, acute bronchitis, costochondritis, and left seventh rib fracture. Dr. Rodriguez diagnosed atypical chest pain, hypertension, and dyspnea. On April 5, 2011 Dr. Vakili noted that appellant complained of left side rib pain and shortness of breath for the past month and a half and diagnosed dyspnea, controlled hypertension and abnormal electrocardiogram. Dr. Rodriguez, in an April 5, 2011 report, noted appellant's complaints of left-sided atypical chest pain for the past month and diagnosed atypical chest pain, hypertension, and dyspnea. These reports, however, are of no probative value in establishing the claimed left rib injury as they predate the May 30, 2011 injury.¹⁶

The remaining medical evidence of record, including diagnostic tests, which do not contain an opinion on the cause of appellant's claimed condition, are insufficient to establish appellant's claim.¹⁷

Further, the Board has held that the fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹⁸ An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment, nor the belief that his condition was caused, precipitated, or aggravated by his employment, is sufficient to establish causal relationship.¹⁹ To establish a firm medical diagnosis and causal relationship, appellant must submit a physician's report that addresses the May 30, 2011 employment incident and how it caused or aggravated his left rib condition.²⁰

OWCP advised appellant of his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment, and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how his claimed left rib condition was caused or aggravated by the May 30, 2011 employment incident, he has not met 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.

¹⁶ *Michelle Kunzwiler*, 51 ECAB 334 (2000).

¹⁷ *Id.*

¹⁸ *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007) *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁹ *See D.U.*, *supra* note 14; *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

²⁰ *Michael S. Mina*, 57 ECAB 379 (2006); *Michael E. Smith*, 50 ECAB 313 (1999).

CONCLUSION

The Board finds that appellant failed to establish that his left rib condition was causally related to the accepted May 30, 2011 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 12, 2014 is affirmed.

Issued: May 7, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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