

FACTUAL HISTORY

On February 19, 2015 appellant, then a 39-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on February 15, 2015, he was walking on rocks while conducting a fence check when the ground beneath his feet gave way causing his left ankle to roll underneath. He stated that he fell onto his knees and into the rocks, thereby rolling his left ankle and straining his left and right knee. He stopped work on February 15, 2015.

Appellant had filed a prior claim for a traumatic work injury, wherein he alleged that he fell down a flight of stairs on January 15, 2014. This claim was accepted by OWCP for bilateral contusion of the knees and lower legs.² Appellant stopped work on January 16, 2014, returned to his job part time with restrictions on April 23, 2014, and returned to his job full time on February 4, 2015.

In support of his claim with regard to the alleged February 15, 2015 incident, appellant submitted literature from Johns Hopkins Medicine regarding peroneal nerve injury. He also submitted a work capacity evaluation (Form OWCP 5-c) dated February 16, 2015 from a provider with an illegible signature indicating that appellant was not to work on that date and that starting February 17, 2015 appellant had work restrictions prohibiting walking, standing, squatting, kneeling, and climbing.

By letter dated February 27, 2015, OWCP noted that as appellant's injury initially appeared to be a minor injury resulting in minimal or no lost time from work, and because the employing establishment had not controverted continuation of pay or challenge the merits of the case, a limited amount of medical expenses were administratively approved, but that the merits of the claim had not been formally considered. It informed appellant that additional information was now necessary to approve his claim and listed the evidence that must be submitted. Appellant was informed that he should submit a medical report with a diagnosis, and a rationalized medical opinion explaining how the diagnosed condition was causally related to the alleged employment incident. He was afforded 30 days to submit the requested information.

In response, appellant indicated that he had a prior claim in case number xxxxxx114 which had been accepted for foot drop, but that the prior condition had not contributed to his fall on February 15, 2015. He noted that as a result of his recent accident he had reinjured his knee and had increased pain.

On March 10, 2015 the employing establishment indicated that appellant was off work for approximately six months for a prior accepted claim for sprain of the knee (date of injury January 15, 2014). It noted that within a week of returning to full-duty work, appellant filed a new claim for sprain of the knee with a date of injury of February 15, 2015.

In a decision dated March 30, 2015 and revised on April 6, 2015, OWCP accepted that the February 5, 2015 incident occurred as alleged, but denied appellant's claim because the medical evidence of record did not establish a diagnosed condition in connection with the accepted work factors.

² OWCP File No. xxxxxx114.

On April 2, 2015 appellant requested an oral hearing before an OWCP hearing representative. The hearing was held on October 20, 2015. At that time appellant indicated that his doctor, who signed the work form, was Dr. Elazier. He noted that he had two falls on February 16, 2015, one when he fell while walking upstairs, and the other when he fell while walking the fence. Appellant testified that it was the first time that he did fence check and that he was not familiar with the area. He noted that as a result of this fall, he had very intense swelling, bruising, cuts, and a lot of muscle spasms. Appellant indicated that he has pain daily. He noted that his ankle was injured in addition to his knee, and noted that he was preparing to undergo surgery on his knee.

In a November 11, 2015 form report, Dr. Peter T. Simonian, a Board-certified orthopedic surgeon, noted that appellant could not work from the date of his surgery on December 3, 2015 until his next appointment on December 10, 2015.

In a February 16, 2015 primary treating physician's report Dr. Stefan Elazier, appellant's treating family practitioner, listed the date of injury as January 15, 2014. He indicated that appellant stated that he had two falls on February 15, 2015, one while going up stairs and other while walking the fence. Dr. Elazier diagnosed joint pain in the left leg and prepatellar bursitis. He indicated that he will keep appellant off work until injections were given. In a February 23, 2015 report, Dr. Elazier indicated that appellant could return to modified work on this date. He listed diagnoses of joint pain in left leg and prepatellar bursitis. Dr. Elazier noted that appellant still complained of left knee pain, and stated that there had been no improvement. In a November 12, 2015 work capacity evaluation, he noted that appellant was unable to perform his job due to left knee pain and weakness. Dr. Elazier placed work restrictions on appellant of walking and standing limited to one hour and prohibited squatting, kneeling, and climbing. He noted that appellant had limited strength and instability to left lower leg. In a November 12, 2015 certificate to return to work, Dr. Elazier indicated that appellant's February 2015 "fall injury was exacerbation of current injury."

By decision dated December 15, 2015, the hearing representative affirmed OWCP's decision with modification. He found that there was no evidence to corroborate appellant's claim that he fell on the stairs on February 15, 2015, but noted that it was not disputed that appellant fell while walking the fence line on February 15, 2015. The hearing representative found, however, that the medical evidence of record was insufficient to establish the medical component of fact of injury. He found that although Dr. Elazier's February 16, 2015 report established a medical diagnosis, appellant failed to establish causal relationship between the accepted work incident and the medical diagnosis.

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. These are the essential elements of each and every

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 or exposure, 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 The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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.⁷

ANALYSIS

Appellant alleged that he sustained an injury when he fell while performing a fence check. It is not disputed that the incident occurred as alleged, and OWCP determined that appellant established a medical diagnosis. However, OWCP denied appellant's claim as it found that he failed to establish causal relationship between the accepted employment incident and the diagnosed condition.

In support of his claim, appellant submitted medical reports by Drs. Simonian and Elazier. Dr. Simonian offered no opinion regarding the cause of appellant's injury and does not discuss appellant's employment. Rather, his report simply noted appellant's work restrictions. As such, his report is of limited probative value in establishing that appellant sustained an employment-related injury on February 15, 2015.⁸

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

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

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

⁷ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁸ See *supra* note 7.

Dr. Elazier did note that appellant fell while walking the fence and he diagnosed joint pain and prepatellar bursitis. However, he did not provide a well-rationalized medical opinion explaining how the accepted employment incident resulted in the medical diagnosis. Dr. Elazier did not explain the process by which appellant's particular work incident caused or contributed to the diagnosed condition or whether such condition was due to nonwork factors.⁹ His reports are therefore insufficient to meet appellant's burden of proof.¹⁰

OWCP also received medical literature from Johns Hopkins Medicine regarding peroneal nerve injury. The Board has previously held that medical literature does not constitute probative medical evidence because it does not contain rationale by a physician relating appellant's condition to an employment incident.¹¹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish causal relationship.¹² As appellant did not establish that his diagnosed condition was causally related to the accepted February 15, 2015 employment incident, he has failed to 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 did not meet his burden of proof to establish an injury causally related to the accepted employment incident.

⁹ *J.S.*, Docket No. 14-818 (issued August 7, 2014).

¹⁰ *Id.*

¹¹ *See D.G.*, Docket No. 15-948 (issued February 10, 2016).

¹² *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 15, 2015 is affirmed.

Issued: May 23, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board