

**United States Department of Labor
Employees' Compensation Appeals Board**

R.M., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
SOUTHERN OREGON REHABILITATION
CENTER & CLINICS, White City, OR,
Employer**

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**Docket No. 07-802
Issued: July 12, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILA S, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 1, 2007 appellant filed a timely appeal from the November 6, 2006 decision of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on January 5, 2006 as alleged.

FACTUAL HISTORY

On January 5, 2006 appellant, then a 59-year-old physician, filed a traumatic injury claim, Form CA-1, alleging that he strained the left side of his neck and left shoulder when he slipped on ice while exiting his vehicle and struck his neck on the running board. Following the incident, he was assisted by a coworker and treated by Nurse Diana Potts at the employing

establishment's clinic. The employing establishment verified that it maintained the parking lot where appellant fell.

On September 22, 2006 the Office requested that appellant provide additional information related to his claim, including a diagnosis and a physician's opinion on the causal relationship between the diagnosis and the alleged incident. Appellant responded on October 6, 2006 with a written statement. When exiting his pick-up truck at approximately 7:45 a.m. on January 5, 2006 appellant's feet "shot out" from under him and he "slammed down" on the icy pavement. Appellant fell on his left side and shoulder and hit his head on the running board of his truck which caused his neck to snap upward as his left shoulder hit the pavement. He was assisted by another employee who had heard him fall and, upon arrival at work he filed a report with the employee's health nurse. Appellant was sore and uncomfortable for approximately 10 days following the fall, but did not stop working. He stated that he continued to have intermittent discomfort in his neck, radiating to the shoulder and arm, with his symptoms worsening following extensive typing and at night. Believing that his symptoms would resolve with time, appellant took ibuprofen and applied heat to manage the pain. When it became clear that the symptoms were persisting, his physician recommended that he undergo physical therapy. Appellant then reported his persistent symptoms to the employee's health nurse.

On October 18, 2006 Dr. Alan Bates, a Board-certified osteopathic family practitioner, submitted a report. He saw appellant for his neck condition on August 25, 2006. Dr. Bates noted that appellant had no prior history of significant neck abnormalities or work-related injuries. He stated that, as a result of his January 5, 2006 fall, appellant suffered a severe strain and stretch injury to the neck. Dr. Bates noted that since the fall appellant had experienced chronic pain in the left side of his cervical spine that radiated intermittently to his left shoulder and arm. He stated that regular physical therapy had yielded improvements.

By decision dated November 6, 2006, the Office denied appellant's claim. The Office accepted that appellant fell in the performance of duty as alleged on January 5, 2006 but found that he had not established that his condition was caused by the accepted employment incident. The Office noted that Dr. Bates' opinion was rendered at least seven months after the accepted employment incident and that appellant had not submitted medical evidence contemporaneous with his January 5, 2006 fall.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

¹ 5 U.S.C. §§ 8101-8193.

² *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office must first determine whether “fact of injury” has been established. “Fact of injury” consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the incident caused a personal injury and, generally, this can be established only by medical evidence.³

When determining whether the implicated employment factors caused the claimant’s diagnosed condition, the Office generally relies on the rationalized medical opinion of a physician.⁴ To be rationalized, the opinion must be based on a complete factual and medical background of the claimant⁵ and must be one of reasonable medical certainty,⁶ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

ANALYSIS

The Office accepted that appellant fell when he slipped on ice on January 5, 2006. Therefore, the issue to be determined is whether appellant has established that he sustained injury to his left shoulder and neck as a result of the accepted employment incident. The Board finds that appellant has not submitted sufficient medical evidence to establish his claim.

The CA-1 form submitted by appellant established that he was seen by a nurse at the employing establishment on January 5, 2006 following a fall in the parking lot. The Board notes, however, that the record contains no medical reports from the employing establishment’s clinic that detail his condition or treatment that day.

On October 18, 2006 Dr. Bates, a Board-certified osteopathic family practitioner, stated that appellant had experienced a severe strain and stretch injury to the neck as a result of falling on ice on January 5, 2006. He found that, following that incident, appellant had been subject to chronic pain on the left side of his cervical spine that radiated intermittently to his left shoulder and arm. Dr. Bates did not provide any objective evidence of injury in his report. Beyond noting that appellant had no prior history of neck problems, Dr. Bates did not provide any explanation for his conclusion that appellant’s condition was employment related. The report consists of a brief narrative which does not relate any findings on examination of appellant or address any diagnostic studies. Dr. Bates noted that his opinion was based on a one-time examination of August 25, 2006, some seven months following the incident at work. The Board

³ *Ellen L. Noble*, 55 ECAB 530 (2004).

⁴ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁵ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *John W. Montoya*, 54 ECAB 306 (2003).

⁷ *Judy C. Rogers*, 54 ECAB 693 (2003).

has held that medical opinions without adequate rationale are of diminished probative value.⁸ Dr. Bates' opinion is insufficient to establish that appellant was injured in the performance of duty.

The Board finds that, as appellant has not submitted a rationalized physician's statement explaining how the employment incident contributed to his neck and shoulder condition, he has not met his burden of proof.

CONCLUSION

The Board finds that appellant has not established that he sustained injuries in the performance of duty on January 5, 2006 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 6, 2006 is affirmed.

Issued: July 12, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

⁸ See *Leon Harris Ford*, 31 ECAB 414, 518 (1980) (finding that medical reports are of limited probative value on a given medical question if they are unsupported to medical rationale).