

landed on his feet and immediately felt excruciating pain in his left knee, that he had a sore shoulder and later developed pain in his lower back. Appellant took pain medication and returned to work the next day and continued to work. He stated that, on November 11, 2003 while casing mail, he tripped on a bucket of flats, causing back and left shoulder pain and then saw a physician on November 15, 2003. Appellant remained off work until November 24, 2003 and worked intermittently until he stopped on November 28, 2003 and has not returned.

The employing establishment controverted the claim, advising that the employment incident occurred on July 10, 2003. Appellant's supervisor, Ann Miles, reported that she went to the scene of the accident shortly after it happened and at that time appellant did not appear to be in pain, responded that he was fine and did not want to go to the doctor. In an investigative interview, Landon Farmer advised that he hit appellant, who then stated that he was not hurt and did not want to go to the doctor. Robert J. Hatten, the postmaster, stated that appellant was not working on November 11, 2003 and no one witnessed an incident when he tripped on a bucket of flats. Mr. Hatten noted that appellant worked on November 13, 14 and 15, 2003 and did not ask for sick leave until November 18, 2003. Appellant submitted medical reports from Dr. Oscar James, a Board-certified internist, dated January 4 and 5, 2004.²

By letter dated January 28, 2004, the Office informed appellant of the type of evidence needed to support his claims for employment-related injuries on July 10 and November 11, 2003. In a February 27, 2004 response, appellant stated that he did not remember the date of the vehicle accident when he filed his claim and that the bucket flat accident occurred the day after the Veterans Day holiday. In a decision dated March 8, 2004, the Office denied the claim. It found that the incidents occurred but that the medical evidence did not establish that appellant sustained a diagnosed medical condition caused by these incidents.

On March 23, 2004 appellant requested a hearing, that was held on December 15, 2004. At the hearing he testified that when hit by the postal vehicle on July 10, 2003, he was lifted and thrown six to eight feet and landed on his feet, injuring his left knee, left ankle and right shoulder. Appellant stated that he tripped on mail flats in November 2003, injuring his left knee and right shoulder and it was then that he first saw a physician. He advised that he was claiming that the conditions of disc bulges throughout his back and arthritis of both wrists, elbows, shoulders and hips were employment related. Appellant testified that he had a Department of Veterans Affairs (VA) disability rating for his left ankle, both knees, both shoulders and his lumbar spine and submitted additional medical evidence and character statements. A July 16, 1994 VA rating decision provided that full VA compensation was payable effective August 1, 1994 and that appellant had service-related disabilities of 20 percent for osteoarthritis of the left knee, 20 percent for osteoarthritis of the right knee, 20 percent for osteoarthritis of the left ankle, 10 percent for osteoarthritis of the left shoulder, 10 percent for osteoarthritis of the right shoulder, 10 percent for osteoarthritis of the lumbar spine and 10 percent for tinnitus, for a combined 70 percent disability rating. A November 9, 2004 Army rating indicated that appellant had a 20 percent disability rating for combat-related traumatic arthritis, in addition to the 70 percent previously awarded by the VA.

² Although Dr. James dated the report January 14, 2003, the inquiry to him was dated January 13, 2004.

By decision dated March 1, 2005, an Office hearing representative affirmed the March 8, 2004 decision on the grounds that the medical evidence was not based on a complete and accurate factual medical background showing how the July 10 and November 2003 incidents resulted in medical conditions. On April 28, 2005 appellant filed an appeal with the Board. In an order dated November 1, 2005, the Board remanded the case to the Office for reconstruction and proper assemblage of the case record, to be followed by an appropriate decision.³ On February 23, 2006 the Office reissued the March 1, 2005 decision.

On March 20, 2006 appellant requested reconsideration and submitted additional evidence dating from March 31, 2004 to January 5, 2006. By decision dated June 20, 2006, the Office denied modification on the grounds that the medical evidence was insufficient to establish causal relationship. Appellant again requested reconsideration on January 30, 2007 and submitted additional medical evidence. A complete July 16, 1994 VA rating provided that service medical records confirmed that appellant was a parachutist for many years and began complaining of joint pain in the right shoulder, knees, right hip and left ankle several years prior to discharge and further noted that computerized tomography (CT) scan in December 1992 demonstrated multi-level degenerative disc disease.

In a March 30, 2007 decision, the Office again denied modification of the prior decisions. On May 30, 2007 appellant requested reconsideration and argued that the 2003 postal vehicle accident caused aggravation of his preexisting left ankle, lumbar spine, right shoulder and bilateral knee conditions and aggravation of non preexisting right ankle, hips, thoracic spine and right shoulder blade condition and presented case law that he deemed relevant. In a July 24, 2007 decision on the merits of appellant's claim, the Office reviewed his arguments, noting that the case law presented was irrelevant as it did not apply to federal employees workers' compensation claims. It found that appellant had not submitted sufficient medical evidence to establish that his diagnosed conditions were caused by the employment incidents.

The medical evidence of record includes records from Army medical clinics dating from 1970 to 1977. These document that in 1975 appellant ruptured the medial collateral ligament of his right knee playing football and had surgical repair. In reports dating from 1990 to 1992, diffuse degenerative joint disease was diagnosed. A January 5, 1993 CT scan of the lumbosacral spine demonstrated multilevel degenerative disc and degenerative joint disease.

X-rays of the right hip and lumbar spine on December 3, 2003 demonstrated hypertrophic arthritis. In reports dated January 4 and 5, 2004, Dr. James noted appellant's report that he stated that he was hit by a truck at work and that he had preexisting osteoarthritis involving his back, hands, knees and hips and mechanical low back pain. He advised that the July 11, 2003 injury resulted in a worsening of lower back and hip pain and recommended light duty. On March 3, 2004 Dr. Stephen M. Kirkland, a Board-certified internist, noted that appellant had been in a motor vehicle accident in July 2003. Examination findings included paraspinal spasm. Dr. Kirkland diagnosed degenerative joint disease, degenerative disc disease and status post trauma. On March 4, 2004 Dr. James diagnosed musculoskeletal pain with the suggestion of secondary gain and malingering.

³ Docket No. 05-1192 (issued November 1 2005).

In a March 16, 2004 clinic note, Dr. Khin M. Kyi, a Board-certified internist, noted that appellant was hit by a postal truck in the right shoulder, spine and knees in July 2003 and still had sharp pains in his head with degenerative joint disease in the knees and shoulders and rheumatoid arthritis. He provided physical findings of limited range of motion with arthritic changes of the joints and advised that appellant's disability was more of underlying degenerative joint disease than the injury. Dr. Kyi recommended that appellant not work. A March 25, 2004 magnetic resonance imaging (MRI) scan of the cervical spine demonstrated a remote compression fracture at C4 and possibly C4 and C5, a disc protrusion at C2-3 with impingement upon the spinal cord and diffuse disc bulging at C3-4 through C6-7 without impingement. On an employing establishment form report dated March 31, 2004 Dr. Kyi checked a box "yes," indicating that appellant's absence from work was in connection with an on-the-job injury. He advised that appellant could not work because it would worsen his osteoarthritis and provided restrictions to his physical activity.

In an April 21, 2004 report, Dr. Joseph Cheng, a Board-certified neurosurgeon, noted a history that appellant was hit in the shoulders and upper back from behind by a postal vehicle in July 2003, falling forward on his knees. Appellant reported that he immediately developed knee and low back pain and that he tripped and fell in November 2003, landing on his hands and developed neck, right ear, right shoulder and right arm pain and also complained of terrible headaches and pain in the cervical, thoracic and lumbar spine with pain and numbness in both hands. Physical findings included a normal straight-leg raising bilaterally with no focal deficit in the upper and lower extremities, positive Tinel's sign in the right wrist. Dr. Cheng reviewed the March 25, 2004 MRI scan report and advised that appellant's symptoms could be coming from the disc protrusion noted on the report.

In a May 12, 2004 report, Dr. Cheng reviewed the MRI scan itself and reported that the C3 compression fracture was old. He noted the disc protrusion at C2-3 and advised that there were diffuse cervical spondylitic changes at multiple levels. On May 28, 2004 Dr. Gregory Sengstock, a Board-certified neurologist, reported a history of a motor vehicle accident on July 10, 2003 and appellant's complaints of pain. Examination findings included limited range of motion of the cervical spine and shoulders with obvious osteoarthritis of the hands. Dr. Sengstock noted electromyography (EMG) findings of severe long-standing bilateral carpal tunnel syndrome with no evidence of cervical radiculopathy. He advised that appellant had severe osteoarthritis and suspected his symptoms were musculoskeletal.

June 16, 2004 x-rays of the right shoulder and cervical spine demonstrated degenerative changes. On November 8, 2004 Dr. Christopher O. Ike, a Board-certified internist, diagnosed osteoarthritis. A whole body bone scan on February 25, 2005 demonstrated degenerative changes of the thoracic and lumbar spines, left elbow, both knees, both feet and ankles. Cervical spine x-rays on February 25, 2005 demonstrated degenerative disc disease and facet arthritis throughout the cervical spine. An April 1, 2005 MRI scan of the lumbar spine demonstrated mild disc bulging at L2 through S1.

In reports dating from February 17 through May 12, 2005, Dr. Keith D. Starkweather, a Board-certified orthopedic surgeon, noted that appellant had right shoulder degenerative joint disease and osteoarthritis of his knees, advising that "a lot of this came from after he was struck by a postal vehicle" and had "suffered these injuries since that time" when he was hit and thrown

into the air and landed on his feet. He diagnosed diffuse degenerative disc disease of the lumbar spine and significant osteoarthritis in the upper extremities and knees. Dr. Starkweather advised that the motor vehicle accident “made him more uncomfortable and made his arthritis more symptomatic.”

By report dated December 27, 2005, Dr. J.D. Littleton, an osteopath, advised that appellant had chronic debilitating pain secondary to degenerative disc disease and osteoarthritis, was not a surgical candidate and was totally disabled. January 5, 2006 MRI scans of the thoracic and lumbar spines demonstrated minimal disc bulging at T5-6, T10-11, L4-5 and L5-S1. In a February 16, 2006 report, Dr. Norman Sims, a Board-certified orthopedic surgeon, noted a history of multiple joint and cervical and lumbar spine problems with decreased range of motion. He advised that, based on his review of July 9, 2005 x-rays, appellant had advanced degenerative changes in both knees. In a June 5, 2006 report, Dr. Littleton noted diagnoses of degenerative disc disease of the cervical, thoracic and lumbar spine with significant arthritis of the upper extremities and knees. He advised that appellant’s condition was permanent and that his severe arthritis had resulted in muscle weakness in the neck with decreased strength in the upper and lower extremities, noting that he wore a neck brace at all times and ambulated with a cane.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act⁴ 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 timely filed within the applicable time limitation period of the Act, 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁵

Section 10.5(ee) of Office regulations defines a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.⁶ To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁷

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.⁹ 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 causal relationship.¹⁰

Under the Act, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.¹¹ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.¹² If the employment exposure causes a permanent condition, such as a heightened sensitivity to a wider field of allergens, the employee may be entitled to continuing compensation;¹³ a medical restriction that is based on a fear of future aggravation due to employment exposure is not an injury under the Act and therefore no compensation can be paid for such a possibility.¹⁴

ANALYSIS

The Board finds that the July and November 2003 incidents occurred. However, the evidence of record is insufficient to establish that appellant sustained an injury or medical condition caused by these incidents. The record supports that appellant, who had been an Army paratrooper, had a long-established history of service-related degenerative disc disease, degenerative joint disease and osteoarthritis and had VA disability ratings for these conditions.

⁷ *Gary J. Watling*, *supra* note 5.

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹¹ *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

¹² *Id.*

¹³ *James C. Ross*, 45 ECAB 424, 429 (1994); *Gerald D. Alpaugh*, 31 ECAB 589, 596 (1980).

¹⁴ *Carlos A. Maurero*, 50 ECAB 117, 119 (1998); *Gaetan F. Valenza*, 39 ECAB 1349, 1356 (1988).

If employment factors cause an aggravation of these underlying physical conditions, compensation could be payable for the period of aggravation.¹⁵

The character statements submitted by appellant are not competent evidence as causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.¹⁶ The many diagnostic studies contained in the record, including CT and MRI scans, x-rays and EMG studies, do not contain an opinion regarding the cause of the diagnosed conditions and medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁷ Likewise, Dr. Cheng, Dr. Sengstock, Dr. Ike, Dr. Littleton and Dr. Sims did not provide an opinion regarding the cause of appellant's condition.¹⁸ While Dr. Kyi checked a form question "yes," indicating that appellant's work absence was related to a work injury, the Board has long 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.¹⁹ Furthermore, he also advised that appellant's disability was more of an underlying degenerative disease than injury.

Dr. James advised in January 2004 that appellant's condition was caused by both his preexisting problems and the July 10, 2003 employment incident that caused a worsening of lower back and hip pain. In March 2004, however, while he diagnosed musculoskeletal pain, he also advised that there was a suggestion of secondary gain and malingering. Moreover, Dr. James did not provide medical rationale explaining the mechanics of how appellant's musculoskeletal pain was caused or aggravated by either employment incident. His reports are therefore insufficient to establish that appellant's degenerative condition was caused or aggravated by the accepted July and November 2003 employment incidents.²⁰ Dr. Starkweather advised that a "lot" of appellant's degenerative joint disease and osteoarthritis came after he was struck by a postal vehicle and that after the July 2003 incident, he became more uncomfortable and his arthritis more symptomatic. He, however, did not exhibit a knowledge of appellant's complete medical history including his service-related disabilities. The issue of whether a claimant's disability is related to an accepted condition is a medical question which must be established by a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disability is causally related to employment factors and supports that conclusion with sound medical reasoning.²¹ Furthermore, Dr. Starkweather did not describe how the July 2003 incident resulted in appellant becoming symptomatic. For these reasons, his

¹⁵ *Raymond W. Behrens*, *supra* note 11.

¹⁶ *Steven S. Saleh*, 55 ECAB 169 (2003).

¹⁷ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁸ *Id.*

¹⁹ *D.D.*, 57 ECAB 734 (2006).

²⁰ *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008).

²¹ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

opinion is not sufficient to establish that appellant's degenerative and arthritic condition was caused or aggravated by employment factors.²²

As appellant failed to provide rationalized medical evidence, based on a complete and accurate factual and medical background, establishing that his diagnosed conditions were caused by his federal civilian employment, he failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant did not establish that he sustained an employment injury in July or November 2003 causally related to factors of employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 24 and March 30, 2007 are affirmed.

Issued: November 4, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

²² *T.H.*, *supra* note 20.