

alone. After he had emptied trash containers for three hours, his right knee began to swell. Appellant returned to the maintenance yard, advised his supervisor of his condition and went home.¹

By decision dated September 15, 2004, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained an employment-related injury on May 8, 2004. Appellant requested a hearing that was held on July 14, 2005.

On May 13, 2004 Dr. Zamani diagnosed a medial meniscal tear and noted that, even after surgery, appellant would not be able to perform his regular duties. On May 14, 2004 a physician noted that appellant was seen for right knee pain, status post surgery. Appellant's condition was described as "not better." In a May 17, 2004 disability certificate, a physician noted that appellant was off work from May 17 to 20, 2004 but could perform modified work from May 21 to June 17, 2004. Work restrictions included no lifting or reaching above the right shoulder with the right arm. In a May 17, 2004 medical note, a physician noted that appellant had right shoulder pain "for some time from reaching and lifting, although he [i]s only [illegible] modified work. Here because three days ago notes a lump on top of [right] shoulder." The diagnosis was right shoulder tendinitis. On June 22, 2004 Dr. Zamani stated that appellant had chronic pain and was unable to drive or perform his duties due to the effects of his medications. He recommended disability retirement.

In a September 20, 2004 report, Dr. John R. Chu, a Board-certified orthopedic surgeon and an Office referral physician, reviewed the medical history and provided findings on physical examination. He diagnosed right knee osteoarthritis, degenerative disc disease of the lumbar spine and right shoulder pain consistent with a rotator cuff tear or tendinitis. Dr. Chu stated that on August 11, 2002 appellant was involved in a motor vehicle accident while performing his duties and sustained a right knee strain and medial meniscal tear. He underwent arthroscopic treatment for this condition which revealed preexisting osteoarthritis. In November 2002, while appellant was walking down a trail carrying heavy equipment, he slipped and fell onto his back. He underwent arthroscopic surgery of his right knee in May 2003. Appellant was released to return to work in January 2004 with a lifting limit of 50 pounds. On May 24, 2004 he had performed heavy lifting of 70 pounds or more at work. Due to appellant's continued knee pain, he was unable to properly perform the lifting and injured his back and right shoulder. Dr. Chu noted that x-rays were consistent with degenerative disc disease of his lumbar spine as well as rotator cuff pathology. He stated that appellant likely had some degenerative disc disease as well as rotator cuff pathology prior to the accident of August 2002 and his traumatic fall in November 2002. However, Dr. Chu had no significant symptoms in his back, shoulder and knee prior to these injuries. He opined that appellant's disability began on May 8, 2004 when he had significant worsening of his knee, back and shoulder condition.

On December 7, 2004 Dr. Jacob E. Tauber, an attending Board-certified orthopedic surgeon, reviewed the history of appellant's condition and provided findings on physical examination. He noted that appellant had pain in his right shoulder pain, right knee and back. Dr. Tauber stated that on August 11, 2002 appellant was a passenger in a truck driven by a

¹ This case was previously before the Board. See Docket No. 07-1855. By order dated April 16, 2008, the Board remanded the case for reconstruction and proper assemblage.

coworker when a tire blew out. The truck went down a hill and landed on trees and shrubs. Appellant sustained injuries to his right shoulder, right knee and back. On November 21, 2002 he was walking down a trail and twisted his right knee when he slipped and fell. Appellant reinjured his right shoulder, right knee and back. Dr. Tauber stated that on May 8, 2004 appellant was working alone, and lifting trash cans and bags weighing more than 40 pounds and throwing them into a truck. When appellant's right knee gave way, he reported the injury. After a few hours, he began to experience right shoulder and back pain. On December 14, 2004 Dr. Tauber diagnosed degenerative arthritis of the right knee, right rotator cuff tears and degenerative disc disease of the lumbar spine and spinal stenosis.

By decision dated January 19, 2006, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained an employment-related injury on May 8, 2004.

On April 18, 2006 Dr. Tauber provided a history of appellant's condition dating back to the August 11 and November 21, 2002 accidents at work. He noted that on May 8, 2004 he was working without assistance, lifting trash cans and bags weighing more than 40 pounds and throwing them into a truck. Dr. Tauber stated that appellant had right shoulder, right knee and low back pain. On physical examination, he noted right shoulder positive impingement and Hawkins signs, low back and right knee tenderness and positive straight leg raising. No recent radiological evaluations were provided. Dr. Tauber diagnosed degenerative osteoarthritis of the right knee, lumbar spine degenerative disc disease with sciatica and spinal stenosis and right rotator cuff derangement, impingement and tear. He stated that it was evident that appellant's work activities on May 8, 2004 caused a permanent aggravation of his underlying pathology. Dr. Tauber opined that the work activities on that day were inappropriate for someone with appellant's preexisting pathology.

In a May 8, 2006 letter, appellant requested that his claim be expanded to include permanent aggravation of right knee osteoarthritis, permanent aggravation of his right rotator cuff tear, impingement and derangement, and permanent aggravation of his degenerative disc disease of the lumbar spine with sciatica and spinal stenosis.

By decision dated August 11, 2006, the Office denied modification of the January 19, 2006 decision.

Appellant requested reconsideration. By decision dated June 24, 2008, the Office denied modification of the January 19, 2006 merit decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim by the weight of the reliable, probative

² 5 U.S.C. §§ 8101-8193.

and substantial evidence,³ including that he is an “employee” within the meaning of the Act,⁴ and that he filed his claim within the applicable time limitation.⁵ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.⁷ Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁸ An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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. 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.⁹

ANALYSIS

The Board finds that the evidence is insufficient to establish that appellant sustained an injury on May 8, 2004 while in the performance of duty.

The May 2004 reports and disability certificates from Dr. Zamani and other physicians did not provide a rationalized explanation as to how appellant’s work on May 8, 2004 caused or aggravated a medical condition. Therefore, they are not sufficient to establish that appellant sustained a work-related injury on May 8, 2004.

³ *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph Whelan*, 20 ECAB 55, 57 (1968).

⁴ *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951). *See* 5 U.S.C. § 8101(1).

⁵ *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O’Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁶ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁸ *T.H.*, 59 ___ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁹ *I.J.*, 59 ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Dr. Chu diagnosed right knee osteoarthritis, degenerative disc disease of the lumbar spine and right shoulder pain consistent with a rotator cuff tear or tendinitis. He stated that on August 11, 2002 appellant was involved in a motor vehicle accident while performing his duties and sustained a right knee strain and medial meniscal tear. Dr. Chu also diagnosed preexisting osteoarthritis. In November 2002, appellant slipped and fell at work and underwent arthroscopic surgery of his right knee in May 2003. He was released to return to work in January 2004 with a lifting limit of 50 pounds. On May 8, 2004 appellant had to perform heavy lifting of 70 pounds or more. Due to his continued knee pain, he was unable to properly perform the lifting and injured his back and right shoulder. Dr. Chu noted that x-rays were consistent with degenerative disc disease of the lumbar spine and rotator cuff pathology that preexisted the August and November 2002 accidents. However, he had no significant symptoms in his back, shoulder and knee prior to these injuries. Dr. Chu opined that appellant became disabled on May 8, 2004 when he had significant worsening of his knee, back and shoulder condition. However, he provided insufficient medical rationale explaining how the May 8, 2004 incident at work aggravated his preexisting conditions. Such medical rationale is particularly necessary in light of the fact that appellant's conditions were long-standing and even predated the 2002 accidents. Lacking adequate medical rationale, Dr. Chu's opinion on causal relationship is of diminished probative value and is insufficient to establish that the May 8, 2004 incident at work aggravated appellant's preexisting conditions or caused a new medical condition.

In two December 2004 reports, Dr. Tauber reviewed the history of appellant's condition and provided findings on physical examination. He provided a history of the August and November 2002 accidents and the May 8, 2004 incident at work. Dr. Tauber noted that on May 8, 2004 appellant was working alone and lifting trash cans and bags weighing more than 40 pounds. When his right knee gave way, he reported the injury. A few hours later, appellant began to experience right shoulder and back pain. Dr. Tauber diagnosed degenerative arthritis of the right knee, right rotator cuff tears and degenerative disc disease of the lumbar spine and spinal stenosis. On April 18, 2006 he provided a history of appellant's condition dating back to the August 11 and November 21, 2002 accidents at work. Dr. Tauber noted that on May 8, 2004 appellant was lifting heavy trash cans and bags and throwing them into a truck. He stated that appellant had right shoulder, right knee and low back pain. On physical examination, Dr. Tauber noted right shoulder positive impingement and Hawkins signs, low back and right knee tenderness and positive straight leg raising. No recent radiological evaluations were provided. Dr. Tauber diagnosed degenerative osteoarthritis of the right knee, lumbar spine degenerative disc disease with sciatica and spinal stenosis and right rotator cuff derangement, impingement and tear. He stated that it was evident that appellant's work activities on May 8, 2004 caused a permanent aggravation of his underlying pathology. Dr. Tauber opined that the work activities on that day were inappropriate for someone with appellant's preexisting pathology. However, he provided insufficient objective physical findings to establish that the May 8, 2004 work activities caused a material change and aggravation of his preexisting conditions. Dr. Tauber also provided insufficient medical rationale explaining how the May 8, 2004 work activities caused the aggravation. Such medical rationale is necessary in light of the fact that appellant's back, shoulder and knee conditions were long-standing and even predated the 2002 accidents. Lacking sufficient objective findings and adequate medical rationale, Dr. Tauber's opinion on causal relationship is of diminished probative value and is insufficient to establish that the May 8, 2004 incident at work aggravated appellant's preexisting conditions or caused a new medical condition. The Board finds that appellant failed to provide rationalized medical

evidence establishing that his work activities on May 8, 2004 caused a new injury or an aggravation of preexisting conditions. Therefore, he failed to meet his burden of proof. The Office properly denied his claim.

On appeal, appellant indicated that the Board should review his June 25, 2007 brief submitted to the Office following the Board's April 16, 2008 decision. Included in the brief are his reasons for disagreeing with the Office's interpretation of the medical evidence. Having reviewed the June 25, 2007 brief, the Board finds appellant's arguments to be without merit. His arguments do not establish that he sustained a work-related injury on May 8, 2004.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury on May 8, 2004 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 24, 2008 is affirmed.

Issued: May 13, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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