

container on or around December 15, 2009 when a container shelf loosened and struck his head. He experienced neck and left shoulder pain. Appellant stopped work on January 21, 2010.²

In a July 7, 2010 letter, the employing establishment controverted the claim on the grounds that appellant failed to provide medical evidence.

OWCP informed appellant in a July 13, 2010 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a medical report from a physician explaining how the alleged December 15, 2009 employment incident contributed to his injury.

Appellant submitted medical evidence. A November 14, 2007 magnetic resonance imaging (MRI) scan obtained by Dr. Alex C. Chan, a Board-certified diagnostic radiologist, exhibited mild C3-C7 degenerative disc height narrowing with asymmetric posterior bony ridging at C5-C6.

In a February 3, 2010 note, Dr. Geetha Scariya, a Board-certified family practitioner, advised that appellant be placed on modified duty on account of his neck pain.³

On February 23, 2010 Dr. Robert L. Hash II, a Board-certified neurological surgeon, performed anterior cervical discectomy. In a May 3, 2010 report, he diagnosed cervical radiculitis, herniated nucleus pulposus, degenerative disc disease and cervicalgia. In response to a form question asking whether appellant's condition was due to his employment, Dr. Hash checked the box indicating that it was "not considered work related." He released appellant to full-time duty effective May 10, 2010.⁴

By decision dated August 23, 2010, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that the accepted December 15, 2009 employment incident caused a neck and left shoulder condition.

Following the August 23, 2010 decision, appellant submitted an August 12, 2010 report from Dr. Hash detailing that a shelf struck the back of his head at work in January 2010. Dr. Hash opined that the incident possibly aggravated a preexisting neck condition and necessitated surgery.

Appellant's counsel requested a telephonic hearing, which was held on December 15, 2010. Appellant testified that he previously injured his right shoulder and lower back in 2007, but was asymptomatic until the December 15, 2009 work event.

By decision dated March 15, 2011, OWCP's hearing representative affirmed the August 23, 2010 denial.

² Appellant added that he received disability compensation from the Department of Veterans Affairs for previous shoulder and back injuries.

³ On February 5, 2010 appellant requested reassignment to light duty, which the employing establishment rejected.

⁴ Appellant also furnished witness statements.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,⁵ including that he is an “employee” within the meaning of FECA and that he filed his claim within the applicable time limitation.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing 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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician’s 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, 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

ANALYSIS

The evidence of record supports that appellant was removing mail from a postal container when a shelf loosened and struck his head on December 15, 2009. The Board finds, however, that he did not meet his burden of proof as the medical evidence did not sufficiently establish that this accepted employment incident was causally related to a neck or left shoulder condition.

In a May 3, 2010 report, Dr. Hash indicated *via* checkbox response that appellant’s cervical radiculitis, herniated nucleus pulposus, degenerative disc disease and cervicgia were not work related. Subsequently, in an August 12, 2010 report, he retracted his original conclusion and determined that appellant’s preexisting neck condition was possibly aggravated sometime in January 2010 when a shelf hit his head while he was on duty. Dr. Hash’s latest opinion did not adequately establish causal relationship because he failed to explain how the

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁶ *R.C.*, 59 ECAB 427 (2008).

⁷ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *T.H.*, 59 ECAB 388 (2008).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

December 15, 2009 employment incident pathophysiologically caused or contributed to a neck or left shoulder injury.¹⁰ In addition, it was phrased in speculative terms.¹¹

The remaining medical evidence from Drs. Chan and Scariya offered limited probative value on the issue of causal relationship as neither physician addressed how appellant's federal employment caused or contributed to a neck or left shoulder condition.¹² In the absence of rationalized medical opinion evidence, appellant failed to meet his burden.

Appellant's counsel contends that the March 15, 2011 decision was contrary to fact and law. As noted, the medical evidence did not sufficiently establish that the accepted December 15, 2009 employment incident was causally related to a neck or left shoulder condition.

Appellant may submit new evidence or argument as part of a formal 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 establish that he sustained a traumatic injury in the performance of duty on December 15, 2009.

¹⁰ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994). The Board notes that Dr. Hash listed an incorrect date of injury. See *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

¹¹ *Kathy A. Kelley*, 55 ECAB 206 (2004); *Thomas A. Faber*, 50 ECAB 566 (1999) (the use of speculative terms diminishes the probative value of medical opinion evidence).

¹² *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 15, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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