

establishment checked a box marked “No,” thereby indicating that the employee was not injured in the performance of duty and explained that its knowledge was limited to appellant’s statements. Appellant did not submit any additional evidence in support of his claim.

On May 19, 2010 OWCP advised appellant that there was insufficient evidence to support his claim and requested additional factual and medical evidence.

In a May 24, 2010 statement, appellant responded to OWCP’s development letter. He contended that his supervisor was given written notice of his injury within 30 days and explained that he immediately reported the injury in writing on the same day of the injury. Appellant stated that there were no witnesses to the employment incident but that his supervisors, union and coworkers knew of the injury. He explained that immediately after the alleged injury he experienced pain and partial immobility behind his back and arm. Appellant reported that he did not sustain any other injuries between the date of injury and the date it was first reported and that he did not have any similar disabilities or symptoms before the alleged injury.

In a February 3, 2009 work status report, a Peter J. Hennessey indicated that appellant could return to work immediately.²

On June 7, 2010 OWCP received an undated statement from an unknown provider that on May 18, 2010 he remembered that appellant informed him that he fell while delivering mail. Appellant refused medical treatment and did not ask for a CA-1 form.

In a decision dated June 21, 2010, OWCP denied appellant’s claim finding that appellant had failed to provide rationalized medical opinion evidence establishing that he sustained a diagnosed condition as a result of the January 21, 2009 employment incident.

On July 18, 2010 appellant requested a review of the written record. In an attached statement, he reported that he was assigned to work at Dorchester, MA for a day when the alleged injury occurred. Appellant stated that a Linda Sullivan filled out the injury report, but he never saw or spoke to her again after that injury date. He also reported that he requested that his medical reports be sent to OWCP on various occasions.

In a February 3, 2009 handwritten progress record, Mr. Hennessey and a S. Clabin stated that appellant was a postal employee who sustained an injury on January 21, 2009. They described that appellant slipped down stairs while delivering mail and reached out with his left arm to break his fall. Appellant complained of pain in his upper left arm and left shoulders.

By decision dated November 17, 2010, an OWCP hearing representative denied appellant’s claim finding that the medical evidence failed to establish that he sustained an injury as a result of the January 21, 2009 employment incident. OWCP found that the record did not support that the medical reports submitted were signed by qualified physicians.

² Mr. Hennessey’s signature appeared on a line noted as “MD Signature.”

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence³ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁴

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.⁵ 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.⁶ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁷ 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.⁸

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.⁹ 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 specified employment factors or incident.¹⁰ 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.¹¹

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

⁵ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁶ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁷ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

⁹ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹¹ *B.B.*, 59 ECAB 234 (2007); *Victor J. Woodhams*, *supra* note 10; *D.S.*, Docket No. 09-860 (issued November 2, 2009).

ANALYSIS

OWCP has accepted that the employment incident occurred as alleged. Appellant alleges that on January 21, 2009 he sustained an upper left arm injury when he slipped and fell at work. OWCP denied his claim finding that he did not provide rationalized medical opinion evidence demonstrating that he sustained a diagnosed condition as a result of the accepted employment incident. The Board finds that the medical evidence fails to establish that appellant sustained an injury causally related to the January 21, 2009 incident.

The only evidence appellant submitted was a February 3, 2009 work status report and handwritten progress report cosigned by a Mr. Hennessey and a Mr. Clabin. The reports indicate that appellant was a postal employee who slipped on black ice and fell down some stairs at work on January 21, 2009. Appellant complained of pain in his back and upper left extremity. Pain, however, is a symptom, not a compensable medical diagnosis.¹² None of the reports contained any medical diagnosis and medical opinion on whether the January 21, 2009 incident caused any condition. As medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value, these reports are insufficient to establish appellant's claim.¹³ Moreover, the record does not identify whether the reports were signed by a physician. The Board has held that a medical report may not be considered probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" under FECA.¹⁴

On appeal, appellant alleges that Mr. Hennessey is a physician as he signed the report as a "MD." The Board notes, however, that the report's letterhead does not list Mr. Hennessey as a physician nor does any other information in the report or the record indicate that Mr. Hennessey is a physician as defined under FECA. The initials "MD" on a medical report is not considered sufficient evidence to demonstrate that the individual who signed the report is a qualified physician under FECA.¹⁵ As previously held, a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8102(2).¹⁶

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.

¹² *Robert Broome*, 55 ECAB 339, 342 (2004).

¹³ *K.W.*, 59 ECAB 271 (2007); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

¹⁴ *R.M.*, 59 ECAB 690 (2008); *E.K.*, Docket No. 09-1827 (issued April 21, 2010); section 8101(2) of FECA provides as follows: (2) the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

¹⁵ *See D.N.*, Docket No. 09-140 (issued April 16, 2009).

¹⁶ *Supra* note 14.

CONCLUSION

The Board finds that appellant did not establish that he sustained a left upper extremity condition as a result of the January 21, 2009 employment incident.¹⁷

ORDER

IT IS HEREBY ORDERED THAT the November 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁷ The Board notes that appellant submitted additional evidence following the November 17, 2010 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that evidence to OWCP along with a request for reconsideration.