

descending a ladder and injuring his left shoulder “as he reached to grip rail.”² Appellant stopped work on December 29, 2008 and filed a claim for wage-loss compensation on January 6, 2009.

In a December 22, 2008 attending physician’s report, Dr. Samer S. Hasan, a Board-certified orthopedic surgeon, diagnosed osteoarthritis based on x-ray findings. He noted that appellant had left shoulder pain since 2005. Dr. Hasan determined that appellant would be totally disabled for the period December 29, 2008 to March 29, 2009 and able to resume light duty on February 29, 2009. He did not respond to a form question asking whether appellant’s injury was employment related.

On January 1, 2009 the Office informed appellant that, as the claim had not been formerly accepted, further evidence was necessary and advised him of the medical evidence needed to establish his claim.

Appellant detailed in December 15, 2008 and January 21, 2009 statements that he was climbing down a ladder after repairing a satellite receiver on August 13, 2008 when his foot slipped off a rung and “both arms pulled straight up.” He felt a wrenching sensation in his left shoulder and subsequently experienced constant pain that became unbearable, leading to total shoulder replacement surgery on December 29, 2008. Appellant added that he previously injured the same shoulder in the spring of 2006 while working on a car and underwent arthroscopies to initially repair the labrum and later remove scar tissue in or around July 2007. He remarked that his pain after the second surgery was “worse than before the first surgery” but was able to perform his job duties. Appellant pointed out that Dr. Hasan’s December 22, 2008 report incorrectly noted that he sustained a prior injury in 2005. He denied sustaining any other injury after the August 13, 2008 incident.

In a January 22, 2009 report, Dr. Hasan related that appellant slipped off a ladder rung and wrenched his shoulder on August 13, 2008. X-rays revealed end stage glenohumeral arthritis. Dr. Hasan specified that appellant had “complete obliteration of the joint space with very large peripheral osteophytes or bone spurs,” which necessitated shoulder replacement surgery on December 29, 2008. He estimated that appellant’s disability would span three months postoperatively. Dr. Hasan further noted that appellant sustained a labral tear in 2006 as demonstrated by x-rays and magnetic resonance imaging (MRI) scan and underwent two separate operations. He opined, “I do believe within a reasonable degree of medical certainty that the condition of end stage glenohumeral arthritis stems from the two injuries dating back to 2006 and 2008 as well as the intervening surgeries.”

By decision dated February 19, 2009, the Office denied appellant’s claim, finding the medical evidence insufficient to establish that the August 13, 2008 work incident aggravated a preexisting left shoulder condition.

Appellant requested reconsideration on March 24, 2009 and submitted a March 12, 2009 report from Dr. Hasan. In the report, he explained that a second-look arthroscopy and a follow

² The Office accepted appellant’s claim as a simple and uncontroverted case resulting in minimal or no time lost from work and payment was approved for limited medical expenses without formal adjudication.

up MRI scan in 2007 revealed early osteoarthritis that was “more advanced” when compared to appellant’s “index presentation back in 2005 for a labrum tear and instability.” X-rays taken on December 4, 2008 exhibited large osteophytes not present in earlier diagnostic imaging and showed that “the cartilage was completely gone.” Dr. Hasan opined:

“So while [appellant] did in fact have preexisting arthritis, this was aggravated by the work[-]related injury and ultimately was the immediate reason leading [him] to seek operative intervention.... I would expect that there is ample documentation that [appellant] sustained a fall on August 13th. Certainly, it is reasonable that such a fall could precipitate an acceleration of a preexisting stable arthritic condition. Additional cartilage may have broken off or sheared off and pain levels may have increased to the point that these were severe enough to warrant presentation in my office and going forward with surgery a short while later.... [G]iven the rapid progression of his arthritic changes from MRI scan to x-ray over a few month period, it is reasonable to conclude that the work[-]related injury aggravated the preexisting condition therefore represents a compensable injury.”

On June 8, 2009 the Office denied modification of the February 19, 2009 decision.

Appellant requested reconsideration on April 27, 2010. He submitted a December 15, 2009 report from Dr. Hasan, which noted that appellant returned to regular duty and his condition improved significantly after total left shoulder replacement. Dr. Hasan observed no irregularities on physical examination while x-rays demonstrated “excellent positioning of glenohumeral implants with no evidence such as loosening or subsidence.” He clarified that appellant was climbing down a ladder on August 13, 2008 when he slipped and “was hanging on the gutter.” Appellant was “suspended with all of his weight hanging down from his arm” before he regained his footing, resulting in increased pain in the shoulder. He advised that “his shoulder had been over tightened” during his first surgery. Dr. Hasan concluded:

“I do think that [appellant’s] arthritis is multifactorial and includes trauma. Certainly, the task of being suspended from the arm that as described, can aggravate a preexisting shoulder condition. It could even be asymptomatic prior to this and become symptomatic. However, I do not believe that the arthritis was caused from that event. That is to say, the most we can suggest that it somehow was aggravated from the injury. I also believe that there are other factors at play including two prior surgeries, none of which made him better. Over tightening of the shoulder is a known cause of arthritis and probably is the principal cause of arthritis in young and middle aged adults. In addition to that there may be genetic factors.... Thus, at most, I can feel that this was a contributing factor and that it might need to be somehow apportioned.”

On May 26, 2010 the Office denied modification of the June 9, 2009 decision.

LEGAL PRECEDENT

An employee seeking compensation under the Act has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,³ including that he is an “employee” within the meaning of the Act and that he filed his claim within the applicable time limitation.⁴ 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.⁵

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.⁶

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.⁷

ANALYSIS

The evidence supports that appellant finished repairing a satellite receiver and was climbing down a ladder on August 13, 2008 when he slipped, grabbed hold of the gutter and regained his footing. However, he has not submitted sufficient medical evidence to establish that this accepted employment incident aggravated his preexisting left glenohumeral arthritis.

Dr. Hasan related in a December 15, 2009 report that appellant slipped off a ladder and was suspended from a gutter “with all of his weight hanging down from his arm” on August 13, 2008. He added that appellant was asymptomatic prior to this incident. Dr. Hasan also pointed out that appellant’s left shoulder was over tightened during the first of two previous procedures, noting that over tightening is a known cause of arthritis and possibly the main cause of arthritis in young and middle-aged adults. He stated that the August 13, 2008 incident did not

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *R.C.*, 59 ECAB 427 (2008).

⁵ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

originally bring about appellant's arthritis, but believed that it "certainly ... as described, can aggravate a preexisting shoulder condition," "somehow" aggravated the injury and "might need to be somehow apportioned." Dr. Hasan concluded that appellant's arthritis was aggravated by multiple contributing factors, including the employment incident, prior surgeries and genetics. Causal relationship does not denote a single and exclusive causative factor. Where a person has a preexisting condition which is not disabling but which becomes disabling because of aggravation causally related to the employment, then regardless of the degree of such aggravation, the resulting disability is compensable.⁸ Nonetheless, the opinion supporting causal relationship must be one of reasonable medical certainty and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.⁹ Here, Dr. Hasan's opinion was of diminished probative value as he did not explain how hanging from a gutter aggravated appellant's condition.¹⁰ His assertion that the August 13, 2008 incident "certainly ... as described, can aggravate a preexisting shoulder condition" was conclusory in nature.¹¹ Likewise, Dr. Hasan's reasoning that appellant was asymptomatic before August 13, 2008 and symptomatic thereafter, without supporting medical rationale, cannot establish causal relationship.¹² Furthermore, his conclusion that the employment incident "somehow" aggravated the injury and "might need to be somehow apportioned" was couched in speculative terms and therefore lacked reasonable medical certainty.¹³

In a March 12, 2009 report, Dr. Hasan commented that appellant's osteoarthritis rapidly progressed between 2005 and December 4, 2008 as shown by radiological evidence. He explained that appellant's fall on August 13, 2008 may have broken or sheared his shoulder cartilage and aggravated his condition. This report however was insufficient to establish the traumatic injury claim because Dr. Hasan based his opinion on an inaccurate rendition of the August 13, 2008 work event. The record clearly indicated that appellant did not fall. Instead, he slipped off a ladder, grabbed hold of a nearby gutter and eventually regained his footing. Medical opinions based on an incomplete or inaccurate history are of diminished probative value.¹⁴

⁸ See also *L.R.*, 58 ECAB 369 (2007); *Roger W. Griffith*, 51 ECAB 491 (2000) (any contribution of employment factors is sufficient to establish the element of causal relationship); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

⁹ *A.D.*, 58 ECAB 149, 157 (2006).

¹⁰ See *Ern Reynolds*, 45 ECAB 690, 696 (1994) (pathophysiological process).

¹¹ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (a medical opinion not fortified by medical rationale is of little probative value). See also *Kenneth J. Deerman*, 34 ECAB 641 (1983) (medical evidence required to prove causal relation is that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical).

¹² See, e.g., *T.M.*, Docket No. 08-975 (issued February 6, 2009).

¹³ *Kathy A. Kelley*, 55 ECAB 206 (2004). The Board also notes that this report was produced more than a year after the employment incident. See *Conard Hightower*, 54 ECAB 796 (2003) (contemporaneous evidence is entitled to greater probative value than later evidence).

¹⁴ *M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980). See also *John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition).

The remaining medical records also failed to establish appellant's claim. The January 22, 2009 report from Dr. Hasan, in which appellant's glenohumeral arthritis was attributed in part to the August 13, 2008 incident, did not provide any fortifying medical rationale.¹⁵ Finally, the December 22, 2008 attending physician's report did not offer any opinion regarding causation.¹⁶ In the absence of well-rationalized medical opinion evidence explaining the nature of the relationship between the diagnosed condition and the employment incident, appellant did not meet his burden of proof.

Appellant argues on appeal that the Office's May 26, 2010 decision was contrary to fact and law. As stated above, the medical evidence did not sufficiently explain how appellant's suspension from a gutter on August 13, 2008 aggravated his preexisting glenohumeral arthritis.

Appellant may submit additional evidence, together with a formal written request for reconsideration, to the Office within one year of the Board's merit decision pursuant to 5 U.S.C. § 8128(a).

CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on August 13, 2008.

¹⁵ See *Taylor*, *supra* note 11.

¹⁶ See *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

ORDER

IT IS HEREBY ORDERED THAT the May 26, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 13, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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