

FACTUAL HISTORY

In a prior appeal,² the Board affirmed the denial of appellant's neck injury claim. OWCP did not dispute that on March 14, 2007 appellant was working on the left wing of an aircraft when he rose up quickly and hit his neck on the torque box cover. Dr. George S. Stefanis, appellant's spinal surgeon, did not offer sound medical reasoning to support that this incident caused or aggravated any of appellant's diagnosed neck conditions.³ The facts of this case as set out in the Board's prior decision are hereby incorporated by reference.

Appellant requested reconsideration based on a September 2, 2008 report from Dr. Stefanis. Noting appellant's history of bending, rising up quickly and hitting his neck on the torque box of the cupboard, Dr. Stefanis explained: "If the patient has narrowing of the foramina and has impact to the skull, into the neck, pushing down on these foramina, they will then become symptomatic. As far as relationship, I have to go by what the patient tell[s] me, but this type of an injury is well documented to cause symptoms such as [he] is experiencing."

In a decision dated November 19, 2010, OWCP reviewed the merits of appellant's case and denied modification of its prior decision. It found that Dr. Stefanis' opinion was speculative and not well rationalized.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁴ An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.⁵

Causal relationship is a medical issue⁶ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete

² Docket No. 09-248 (issued July 17, 2009).

³ Dr. Stefanis noted that appellant was found to have disc protrusions in his neck following the March 14, 2007 incident. A myelogram showed a disc/osteophyte complex causing stenosis at C4-5, C5-6 and C6-7, with the C5-6 level being the worst. There appeared to be foraminal encroachment at all those levels with the worst being the lower two.

⁴ 5 U.S.C. § 8102(a).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

factual and medical background of the claimant,⁷ must be one of reasonable medical certainty,⁸ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁹

An award of compensation may not be based on surmise, conjecture or speculation.¹⁰ It is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.¹¹

ANALYSIS

The work incident that occurred on March 14, 2007 is established. The question for determination is whether what happened that day caused an injury to appellant's neck.

Appellant's claim for workers' compensation benefits rests on the opinion of his spinal surgeon, Dr. Stefanis. In his earlier report, Dr. Stefanis observed that appellant was found to have disc protrusions in his neck following the incident, but this did not show that the incident caused the protrusions. The protrusions could have been preexisting. Dr. Stefanis referred to his initial notes, dated June 28, 2007, "when [appellant] started having cervical symptoms." This was three months after the incident at work, which he did not explain.

In his September 2, 2008 report, Dr. Stefanis looked back at his earlier report and noted that there appeared to be foraminal encroachment at C4-5, C5-6 and C6-7, with the worst being the lower two levels. From this, he reasoned that, if appellant had an impact to the skull, into the neck, such that it pushed down on these foramina, "they will then become symptomatic." The history of what happened on March 14, 2007 does not show an impact to the skull pushing down on appellant's neck. Appellant stated that he hit his neck on the torque box cover. The mechanism of injury that Dr. Stefanis described is not established and it does not explain the apparent late onset of appellant's symptoms.

Although Dr. Stefanis attempted to explain from a medical perspective how the incident could have caused foraminal encroachment to become symptomatic, medical conclusions based on inaccurate or incomplete histories have little probative value.¹² The Board therefore finds that

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹⁰ *Shirloyn J. Holmes*, 39 ECAB 938 (1988); *Pamela A. Harmon*, 37 ECAB 263 (1986); *Vernon O. Fein*, 34 ECAB 78 (1982). *See also Manuel Garcia*, 37 ECAB 767 (1986); 20 C.F.R. § 10.110(a).

¹¹ *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983).

¹² *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

Dr. Stefanis' opinion fails to establish the critical element of causal relationship. The Board will affirm OWCP's November 19, 2010 decision.

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that the March 14, 2007 work incident caused an injury to his neck.

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 21, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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