# United States Department of Labor
# Employees' Compensation Appeals Board

| | | |
|---|---|---|
| **M.D., Appellant** | ) | |
| **and** | ) | **Docket No. 11-639** |
| | ) | **Issued: September 28, 2011** |
| **DEPARTMENT OF HEALTH & HUMAN SERVICES, NATIONAL INSTITUTE OF HEALTH, Bethesda, MD, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On January 10, 2011 appellant filed a timely appeal from a December 13, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### ***ISSUE***

The issue is whether appellant met his burden of proof to establish that he sustained an injury as a result of a July 22, 2009 employment incident.

### ***FACTUAL HISTORY***

On July 30, 2009 appellant, then a 50-year-old respiratory therapist, filed a traumatic injury claim alleging that on July 22, 2009 he sustained abrasions to his hands, left wrist, right

[1] 5 U.S.C. § 8101 *et seq.*

leg and right knee after he fell near the entrance of the employing establishment. He stopped work on July 22, 2009 and returned on July 29, 2009.[2]

In a July 22, 2009 work status report, a physician's assistant stated that appellant was seen for multiple abrasions to his left wrist and right knee and could return to work on July 27, 2009. In a July 22, 2009 handwritten radiology report, Dr. Laurance Kupperberg, a Board-certified diagnostic radiologist, stated that appellant fell on his right knee and experienced pain. He noted degenerative joint disease and arthritic changes and indicated that the findings for appellant's right knee and left wrist were negative.

In a July 30, 2009 handwritten employee health progress note, an unknown provider stated that appellant tripped inside the entrance at south gate and fell on his right knee. Appellant tried to break his fall with his left hand and sustained multiple contusions to his right wrist, elbow and forehead.

In an August 2, 2009 work status report, Dr. Kisha Davis, a Board-certified family practitioner, diagnosed right leg edema and deep vein thrombosis versus cellulitis. She referred appellant to the emergency room for further evaluation. In an August 2, 2009 handwritten treatment record, Dr. Davis noted that he complained of right shin redness and rash since July 23, 2009. She stated that appellant was seen on July 22, 2009 after a fall and sustained abrasions to his wrist, head, shin and knee. A rash also developed 24 to 48 hours after the fall.

In an August 2, 2009 emergency discharge report, Dr. James McQuiston, Board-certified in emergency medicine, stated that an examination revealed that appellant suffered from cellulitis. He explained that this skin infection usually developed after an injury, cut, bite or sting.

In a September 24, 2009 disability slip, Dr. Rebecca H. Shaffer, a Board-certified internist, stated that appellant was under her care from September 22 to 25, 2009. She requested that he gradually return to a full schedule on September 28, 2009 dependant on continued improvement. In an October 27, 2009 disability slip, Dr. Shaffer noted that appellant could return to work on November 2, 2009. In a November 3, 2009 disability note, she reported that it would be in appellant's best interest to avoid working four days straight and requested that he be able to work Thursdays and Saturdays.

On September 29, 2009 OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested that he resubmit his Form CA-1 because it was illegible. It also requested he provide a narrative medical report from a physician, which included dates of examination and treatment, results of examinations and tests, history of injury, description of findings, diagnosis and a physician's opinion, with medical rationale, explaining how the alleged employment incident caused or aggravated the claimed medical condition.

[2] On July 10, 2010 appellant filed a (Form CA-7) for leave buy back compensation for the period September 8 to November 21, 2009. He submitted various unsigned disability certificates from an unknown provider, who noted that he was unable to return to work due to total or partial incapacitation from August 5 to September 22, 2009. On November 12, 2010 OWCP advised appellant that it would not take any action regarding his Form CA-7 compensation claim until his traumatic injury claim was resolved.

Appellant resubmitted his Form CA-1 and provided additional medical evidence. In a July 22, 2009 handwritten treatment record, a physician's assistant stated that appellant was treated after he fell down at work and scraped his forehead. Appellant also sustained abrasions to his head, injuries to his left wrist and swelling and pain in his right knee.

In a November 24, 2010 statement, appellant reported that on July 22, 2009 he was on his way to attend a required course at the employing establishment. He had just passed through the security gate carrying his course-related materials and security badge when he fell on his right knee and leg. Appellant put his hand out to break his fall. When he hit the ground, he rolled and scraped his forehead. Two security officers ran from the security booth to offer assistance.

In a decision dated December 13, 2010, OWCP denied appellant's claim on the grounds of insufficient medical evidence establishing that he sustained any condition causally related to the July 22, 2009 employment incident. It accepted that the work event occurred as alleged but denied his claim finding that the medical evidence did not provide physician's opinion explaining how the accepted incident caused or contributed to the alleged conditions.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence[4] 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.[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.[6] 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.[7] 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.[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.[9]

[3] 5 U.S.C. §§ 8101-8193.

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

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

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

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

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

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

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.[10] 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.[11] 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.[12]

## ***ANALYSIS***

On July 30, 2009 appellant filed a traumatic injury claim alleging that on July 22, 2009 he sustained an injury when he tripped and fell at work. OWCP accepted that the July 22, 2009 employment incident occurred as alleged but denied the claim due to insufficient medical evidence to establish an injury. The Board finds that appellant established that he sustained abrasions of his left wrist, right leg and right knee on July 22, 2009 as a result of his accepted fall.

OWCP procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.[13] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims a rationalized medical opinion supporting causal relationship is required.[14]

Appellant claimed that on July 22, 2009 he sustained abrasions to his hands, left wrist, right leg and right knee after he fell near the entrance of the security gate at work. On August 2, 2009 Dr. Davis noted that he was seen on July 22, 2009 after a fall and sustained abrasions to his wrist, head, shin and knee. Appellant was also seen in the employing establishment health unit and his multiple contusions to his right wrist, elbow and forehead were documented in the record. The Board finds that his abrasions resulting from the fall at work were documented by medical personnel and are the type of clear-cut injuries which do not require rationalized medical opinion evidence regarding causal relationship. The Board finds that these abrasions arise from the incident that day at work.

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

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

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

[13] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

[14] *A.S.*, 59 ECAB 246 (2007); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

On appeal, appellant alleged that he sustained cellulitis as a result of the July 22, 2009 employment incident. The only medical evidence providing a diagnosis of cellulitis is the August 2, 2009 work status report of Dr. Davis and Dr. McQuiston's August 2, 2009 discharge report. Neither of the reports, however, provided any opinion on the cause of appellant's cellulitis or related his condition to the July 22, 2009 employment fall at work. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.[15] Dr. Davis mentioned that on July 22, 2009 appellant fell down at work and developed a rash 24 to 48 hours after the fall. She did not explain how the July 22, 2009 slip and fall incident was competent to cause or contribute to his cellulitis. Without a well-rationalized medical opinion explaining how appellant's condition resulted from the July 22, 2009 employment incident, these reports are insufficient to meet his burden of proof.[16]

The additional medical evidence of record is likewise insufficient to establish any other diagnoses or periods of disability. Appellant provided disability slips by Dr. Shaffer dated September 24, October 27 and November 3, 2009. These notes merely indicated that he was unable to work but do not contain any medical diagnosis or opinion regarding causal relationship. Similarly, Dr. Kupperberg's July 22, 2009 radiology report did not provide any medical diagnosis or medical opinion on causal relationship.

Appellant also submitted various reports from a physician's assistant. Section 8102(2) of FECA, however, provides that 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. As physician's assistants are not "physicians" under FECA, their medical opinions regarding diagnosis and causal relationship are of no probative medical value.[17] The handwritten treatment note from an unknown provider at the employee health office is similarly deficient. The Board has held, however, that a medical report with no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8102(2) or without proper identification of who provided the signature does not constitute probative medical evidence.[18] This treatment note does not contain any information demonstrating that a physician completed and signed it.

On appeal, appellant noted the fact that his cellulitis condition arose immediately after his injury and that he never experienced symptoms of cellulitis until his injury. As noted, however, he did not provide sufficient medical evidence to support causal relation. The Board has held that the mere fact that a condition arises after an injury that was not present before an injury is not sufficient, of itself, to support causal relationship.[19] Causal relationship is a medical issue

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

[16] *See J.F.*, Docket No. 10-1978 (issued May 16, 2011).

[17] 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005); *S.E.* Docket No. 08-2214 (issued May 6, 2009); *E.H.*, Docket No. 08-1862 (issued July 8, 2009).

[18] *D.D.*, 57 ECAB 734 (2006); *Richard J. Charot*, 43 ECAB 357 (1991); *E.K.*, Docket No. 09-1827 (issued April 21, 2010).

[19] *Michael S. Mina*, 57 ECAB 379 (2006).

that can only be established by the submission of rationalized medical opinion evidence.[20] Appellant did not provide adequate rationalized medical opinion to establish that his cellulitis was causally related to the July 22, 2009 fall at work.

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 established that he sustained abrasions as a result of his fall on July 22, 2009 but has not established that any other medical conditions or disability were sustained as a result of this incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the December 13, 2010 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: September 28, 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

[20] *A.D.*, 58 ECAB 149 (2006); *T.R.*, Docket No. 10-2041 (issued July 8, 2011).