

that he failed to submit sufficient medical evidence to establish that he sustained a right shoulder or neck injury in the performance of duty. By decision dated March 1, 2010, it denied appellant's request for a hearing as untimely. By decision dated December 17, 2010, OWCP denied his request for reconsideration without a merit review, finding the request was untimely and that he had not established clear evidence of error. In an October 5, 2011 decision,² the Board set aside the December 17, 2010 decision, finding that OWCP erred in finding appellant's reconsideration request untimely. The Board remanded the case to OWCP to further review appellant's December 7, 2010 reconsideration request in accordance with its regulations and procedures. The facts of the case as set forth in the Board's October 5, 2011 decision are incorporated by reference.

On August 27, 2009 the employing establishment issued a Form CA-16, authorization for examination and treatment, to Vickers Chiropractic Care to furnish office treatment as medically necessary for the effects of the August 25, 2009 injury.

In an August 31, 2009 report, Dr. Edward D. Vickers, a chiropractor, stated that appellant sought treatment that day for symptoms associated with his August 25, 2009 employment injury. Appellant initially felt bilateral shoulder pain on August 25, 2009 while climbing up a ladder to get out of a boat. Dr. Vickers advised that appellant was experiencing neck, thoracic and bilateral shoulder pain, which began immediately following the work injury, which he rated a 10 on a scale of 1 to 10. His symptoms were constant and not improving. Appellant related that he had hip pain, leg pains, foot and ankle problems and right shoulder problems in the past. Dr. Vickers diagnosed shoulder depression on the left and right which was causing localized lower cervical pain. He placed appellant on a treatment program consisting of chiropractic adjustments to restore normal articular function, electrical muscle stimulation/hot packs to relieve pain and muscle spasm, and manual soft tissue work to break down fascia fixation and resistance to stretch. Dr. Vickers completed a series of form reports documenting appellant's spinal manipulation treatments. The forms did not state the diagnosis for which the treatment was provided.

In Form CA-17 reports dated October 14 and 23, 2009, Dr. Vickers diagnosed cervical sprain/strain and radicular neuralgia. He checked a box indicating that the symptoms and findings he noted on examination were consistent with the history of injury appellant provided.

In a report dated October 20, 2009, Dr. Anthony Shydohub, a specialist in neurology, evaluated appellant for neck and right shoulder pain resulting from his August 25, 2009 work injury. Appellant continued to experience symptoms from this incident. Dr. Shydohub opined that appellant most likely had a severe sprain of the cervical spine and might also have developed tendinitis in the area, which was affecting the right shoulder. He stated that appellant's persistent symptoms could be the result of radiculopathy. Dr. Shydohub recommended that appellant undergo a magnetic resonance imaging (MRI) scan of his cervical spine and right shoulder and continue with his chiropractic treatments and medication.

² Docket No. 11-716 (issued October 5, 2011).

In a report received by OWCP on August 30, 2010, Dr. Vickers opined, based on reasonable chiropractic certainty, that a subluxation found on x-ray was directly and approximately the result of the August 25, 2009 work injury.

In a report received by OWCP on December 14, 2010, Dr. Vickers stated that cervical x-rays taken of appellant on August 31, 2009 showed subluxation at C4-6. He advised that lateral cervical x-ray demonstrated moderate to bad degenerative disc changes at C4-7 with mild degenerative changes at C4-5.

By decision dated November 4, 2011, OWCP denied modification of the December 7, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an “employee of the United States” within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized 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 of the claimant, 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.⁸

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

⁸ *Id.*

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁹

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹⁰ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.¹¹

ANALYSIS

OWCP accepted that appellant climbed a ladder on August 25, 2009. The Board finds that he has not established that this incident caused an injury. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.¹²

Appellant initially sought treatment from Dr. Vickers, a chiropractor.¹³ In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a "physician" as defined under 5 U.S.C. § 8101(2). A chiropractor is not considered a physician under FECA unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.¹⁴ Dr. Vickers diagnosed cervical subluxation based upon his August 31, 2009 x-ray evaluation. However, this section of FECA provides that the term "physician ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."¹⁵ While Dr. Vickers diagnosed cervical subluxation and would be considered a physician for treatment of subluxation, he did not report that he treated appellant for spinal subluxation. His reports indicate that he treated appellant for diagnoses of shoulder depression, cervical sprain/strain and radicular neuralgia. The Board also notes that, while on August 30, 2010 Dr. Vickers reported that the subluxation found on x-ray was the result of the August 25, 2009 work injury, this report is of no probative medical value. Again, Dr. Vickers did not state that he treated appellant for subluxation and he offered no explanation whatsoever as to how he reached his conclusion regarding causal relationship.

⁹ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁰ *Id.*

¹¹ See *Ern Reynolds*, 45 ECAB 690 (1994).

¹² *Carlone*, *supra* note 6.

¹³ The employing establishment issued a Form CA-16 to Vickers Chiropractic Care on August 27, 2009. A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *Elaine M. Kreymborg*, 41 ECAB 256 (1989). Although OWCP adjudicated appellant's claim of injury, it did not adjudicate the issue of reimbursement pursuant to this Form CA-16. On return of the record, it should proceed to adjudicate this matter.

¹⁴ See *Mary A. Ceglia*, 55 ECAB 626 (2004).

¹⁵ See *Isabell Mitchell*, 55 ECAB 623 (2004).

Dr. Shydohub stated in an October 20, 2009 report that appellant had experienced continued symptoms of neck and right shoulder pain since his August 25, 2009 work injury. He noted that appellant probably sustained a severe sprain of the cervical spine and might have also developed tendinitis affecting the right shoulder. Dr. Shydohub advised that appellant's symptoms could be the result of radiculopathy and recommended that he undergo MRI scans of his cervical spine and right shoulder. He did not describe appellant's ladder climbing incident at work in any detail or how it was competent to cause an injury. Dr. Shydohub's opinion is also of limited probative value in that it is general in nature and equivocal on causal relation. He noted summarily that appellant's shoulder and neck conditions were causally related to the August 25, 2009 work incident. Appellant failed to provide a medical report from a physician that explains how the work incident of August 25, 2009 caused or contributed to the claimed right shoulder and neck injuries.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the August 25, 2009 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained a right shoulder or cervical injury in the performance of duty on August 25, 2009. OWCP properly denied appellant's claim for compensation.

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 failed to establish that he sustained right shoulder or cervical injuries in the performance of duty on August 25, 2009.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2011 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 2, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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