

FACTUAL HISTORY

On September 13, 2012 appellant, then a 71-year-old transportation security officer, filed a traumatic injury claim under OWCP File No. xxxxxx033, alleging that on March 6, 2012 she hurt her left shoulder when she fell on her knees and hands after tripping over cement blocks that were stacked three high at the bottom of a stair railing. Iona C. Patchara, appellant's supervisor, reported that no time was lost from work and she was in the performance of duty at the time of injury.

In a September 27, 2012 letter, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that additional factual and medical evidence be submitted within 30 days. OWCP also requested that the employing establishment submit any medical evidence regarding treatment appellant received at its medical facility.

In an October 3, 2012 statement, appellant reiterated her description of the March 6, 2012 incident and that it was witnessed by a supervisor. She did not sustain any other injury, symptoms or disability prior to the claimed injury. At the time of injury, appellant was on limited-duty status due to a previous right shoulder injury for which she underwent surgery under OWCP File No. xxxxxx435. When she fell, her right shoulder gave way and her weight shifted to her left shoulder.

In an October 9, 2012 medical report, Dr. Robert W. Patti, an attending Board-certified orthopedic surgeon, obtained a history that seven months ago, appellant fell down a landing on all fours. Appellant underwent surgery on her right shoulder which was far worse than the left shoulder. Dr. Patti noted her ongoing left shoulder problems and complaints. On physical examination of the left shoulder, he reported essentially normal findings except a tender left acromioclavicular (AC) joint, diffuse tenderness in the cuff and biceps, limited range of motion and a seemingly positive superior labrum anterior position (SLAP) test. Dr. Patti reported that the right shoulder was very good postoperatively with a very good range of motion that was more than 90 percent. An x-ray of the left shoulder revealed a degree of AC joint degenerative disease with some inferior and superior spurring. The outlet view showed a thickened acromion that was Type 2. Neither the glenohumeral joint nor the subacromial space was not apparently narrowed. There was no transcalcification. There was mild sclerosis over the greater tuberosity.

Dr. Patti diagnosed subacromial impingement, rotator cuff tendinitis and a possible SLAP tear. He concluded that appellant could perform her usual job. Dr. Patti prescribed physical therapy to treat her left shoulder. In an October 9, 2012 attending physician's report, he stated that the date of injury was August 7, 2011. Dr. Patti provided a history that appellant tripped over a cement block and landed on all fours. He diagnosed rotator cuff tendinitis and noted with a checkmark "yes" that the condition was caused or aggravated by an employment activity. In an October 23, 2012 report, Dr. Patti noted that an injection helped appellant's left shoulder pain and movement. He reported essentially normal physical examination findings except rotator cuff tenderness and prominent crepitation with prone off the table exercises subacromially. Appellant's gross movement had improved with active assist that was approaching 85 percent of normal. Dr. Patti could not read the SLAP test because it irritated appellant. He advised that she likely had a left rotator cuff tear and possible SLAP lesion.

In a November 1, 2012 decision, OWCP accepted that the March 6, 2012 incident occurred as alleged. It denied appellant's claim, however, finding insufficient medical evidence to establish a left shoulder injury causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence³ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she 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 or she 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

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.⁸ 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.⁹ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁰

² 5 U.S.C. §§ 8101-8193.

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).

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

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹⁰ *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

OWCP accepted that on March 6, 2012 appellant fell when she tripped over cement blocks that were stacked at the bottom of a stair railing while in the performance of duty. It found that the medical evidence failed to establish that she sustained a left shoulder condition as a result of the accepted incident. The Board finds that appellant failed to provide sufficient medical evidence that her left shoulder condition was causally related to the March 6, 2012 employment incident.

Appellant submitted medical reports from Dr. Patti who provided a history of the accepted employment incident, listed findings on physical and x-ray examination. Dr. Patti found that appellant had subacromial impingement, rotator cuff tendinitis, a “possible” SLAP tear and lesion and “likely” a rotator cuff tear of the left shoulder. He opined that she could perform her usual work duties and prescribed physical therapy to treat her shoulder conditions. The Board notes that Dr. Patti’s diagnoses of SLAP tear, lesion and rotator cuff tear as “possible” is speculative in nature.¹¹ In an October 9, 2012 report, he indicated with a checkmark “yes” that appellant’s rotator cuff tendinitis was caused or aggravated by an employment activity.¹² Dr. Patti’s report is of diminished probative value on the issue of causal relationship.¹³ He failed to provide medical rationale explaining how appellant’s fall caused the injury.¹⁴ A checkmark response, without further explanation or rationale, is insufficient to meet this standard.¹⁵ The other reports and prescription notes from Dr. Patti do not provide any opinion addressing the causal relationship between the diagnosed left shoulder conditions and the accepted March 6, 2012 employment incident.¹⁶ The Board finds that the opinion of Dr. Patti is insufficient to establish appellant’s claim.

The Board finds that there is insufficient rationalized probative medical evidence of record to establish that appellant sustained a left shoulder injury causally related to the accepted March 6, 2012 employment incident. Appellant did not meet her burden of proof.

The Board notes that appellant submitted new evidence after issuance of OWCP’s November 1, 2012 decision and on appeal and contended that it established that she sustained an

¹¹ Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

¹² The Board notes that, while Dr. Patti provided an incorrect date of injury, his description of appellant’s employment incident corresponds with the history provided on her claim form.

¹³ *See Lucrecia Nielsen*, 42 ECAB 583 (1991); *Lillian Jones*, 34 ECAB 379 (1982) (an opinion on causal relationship which consists only of a physician checking “yes” to a medical form report question on whether the claimant’s disability was related to the history given is of little probative value).

¹⁴ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

¹⁵ *See Alberta S. Williamson*, 47 ECAB 569 (1996).

¹⁶ Medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship. *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

employment-related left shoulder injury. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁷

Appellant may submit this or any additional 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 her burden of proof to establish that she sustained a left knee injury on March 6, 2012 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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

¹⁷ See 20 C.F.R. § 501(c)(1); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).