



## **FACTUAL HISTORY**

On April 7, 2011 appellant, then a 43-year-old computer scientist, filed a traumatic injury claim, alleging that he injured his knee, middle and lower back, neck and upper right shoulder when he hit his head while cleaning outside his building. He stopped work that day and returned on April 11, 2011.

By letter dated April 18, 2011, OWCP informed him of the evidence needed to support his claim.

On April 25, 2011 appellant indicated that, due to an upcoming inspection, he was bending down pulling weeds and when he arose, he hit his head on a metal bar which made him fall.

In an April 13, 2011 report, Dr. Daniel Kharrazi, a Board-certified orthopedic surgeon, reported a history that on April 4, 2011 appellant hit his head on a metal bar when he stood and this caused him to fall and injure his cervical and lumbar spines, his right shoulder and right knee. He indicated that appellant had complaints of pain in each area and the cervical spine was most bothersome. Dr. Kharrazi advised that cervical spine examination demonstrated tenderness to palpation of the paraspinal muscles and painful range of motion, yet also indicated that appellant had normal cervical range of motion with no pain. Hyperextension, cervical compression, shoulder abduction, shoulder depression, Tinel's at elbow and wrist, abduction, acromioclavicular (AC) joint stress and straight leg raising tests were negative. Upper extremity reflexes and strength were normal. Right shoulder forward flexion and abduction were reduced and appellant had tenderness to palpation over the subacromial bursal space and shoulder girdle musculature with no tenderness over the right sternoclavicular joint, scapula, rotator cuff and biceps tendon; no instability was noted and Neer and Hawkins impingement signs were negative. Effusion was present in the right knee, which had normal range of motion. Dr. Kharrazi's assessment was history of industrial injury to the cervical and lumbar spines, right shoulder and knee. He recommended magnetic resonance imaging (MRI) scan studies and advised that appellant should be off work from April 13 to 27, 2011.

An April 15, 2011 MRI scan study of the thoracic spine demonstrated an old stable compression fracture at T3 and minimal desiccation of the T8-9 and T9-10 disc spaces. On April 27, 2011 Dr. Kharrazi indicated that appellant continued to be most symptomatic with regard to his cervical spine. He discussed the above thoracic MRI scan study findings, as well as findings of cervical and lumbar MRI scan studies.<sup>2</sup> Dr. Kharrazi indicated that physical examination demonstrated tenderness to palpation and painful range of motion of the thoracic and lumbar spines and that appellant had a positive straight leg raise test bilaterally. He also indicated that range of motion was normal with no pain. Dr. Kharrazi reiterated his prior assessment and advised that cervical, thoracic and lumbar spine MRI scan studies demonstrated degenerative disc disease.

In a May 26, 2011 decision, OWCP accepted the incident but found that the medical evidence did not establish that the claimed conditions were related to an established work-related

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<sup>2</sup> The reports of these studies are not found in the case record.

event. On June 23, 2011 appellant requested a review of the written record. He noted that he continued to suffer residuals as a result of a June 3, 2009 accepted employment injury, adjudicated under file number xxxxxx989<sup>3</sup> and that the incident on April 4, 2011 caused a significant worsening of his cervical, thoracic, lumbar, right shoulder and right knee pain.

In a June 9, 2011 report, Dr. Kharrazi indicated that on April 4, 2011 appellant sustained an industrial injury to the cervical, thoracic and lumbar spine and to the right knee and shoulder. He referred to his April 11, 2011 report and stated that there was an obvious causal relationship between the diagnosed conditions and the employment injury. In reports dated July 27, 2011, Dr. Steve Yoon, Board-certified in physical medicine and pain medicine, indicated that appellant had been under his care for an orthopedic condition. He reported that Dr. Kharrazi had taken appellant off work in April 2011 and advised that he could return to modified duties on July 28, 2011. Dr. Yoon recommended an ergonomic evaluation.

By decision dated October 27, 2011, an OWCP hearing representative affirmed the May 26, 2011 decision on the grounds that the medical evidence was insufficient to establish the claim. On October 25, 2012 appellant's attorney requested reconsideration.

Dr. Jacob E. Tauber, a Board-certified orthopedic surgeon, reported in an October 16, 2012 report the history of the 2009 and 2011 injuries, ensuing medical treatment and his review of medical records, including MRI scan studies of the cervical and lumbar spines, the right knee and right shoulder.<sup>4</sup> He noted appellant's complaint of frequent radiating neck pain; right shoulder pain; upper, mid and lower back pain that radiated into the legs; and right knee pain, all of which was increased with activity. Dr. Tauber's examination demonstrated pain with forward flexion and cervical motion and tenderness along the medial right knee but ligaments were intact to stress testing. He advised that appellant was otherwise neurologically intact for motor strength, deep tendon reflexes and sensation to pinprick. Dr. Tauber diagnosed degenerative disc disease of the cervical spine, with radiculopathy; degenerative disc disease of the lumbar spine; right shoulder impingement syndrome with adhesive capsulitis; and chondromalacia of the medial femoral condyle of the right knee. He opined that appellant had multiple conditions that were due to the traumas he sustained in 2009 and 2011 and were also caused by his repetitive work duties. Dr. Tauber specifically stated that it would be impossible to state that appellant's degenerative conditions of the spine were completely unrelated to work duties, noting that long periods of sitting would affect the lumbar spine; computer work would affect the cervical spine; rising, sitting and carrying out numerous activities would affect the right knee and right shoulder. He concluded that all diagnoses should be accepted as work related as it would be impossible to state that appellant's work duties had no effect on these conditions.

In a merit decision dated January 3, 2013, OWCP denied modification of the prior decisions.

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<sup>3</sup> The record before the Board includes a traumatic injury claim form for an employment-related motor vehicle accident. Claim No. xxxxxx989 is not presently before the Board.

<sup>4</sup> Dr. Tauber did not provide dates of the MRI scan studies.

## LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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. Regardless of whether the asserted claim involves a traumatic injury or an occupational disease, an employee must satisfy this burden of proof.<sup>5</sup>

OWCP regulations at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.<sup>6</sup> To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>7</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>8</sup> 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 employee.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>10</sup>

## ANALYSIS

The evidence supports that the April 4, 2011 employment incident occurred as alleged. The Board, however, finds that the medical evidence of record is insufficient to establish that appellant sustained an injury or medical condition caused by this incident.

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<sup>5</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>6</sup> 20 C.F.R. § 10.5(ee) (1999, 2011); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>7</sup> *Supra* note 5.

<sup>8</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>9</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>10</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

The April 15, 2011 MRI scan study of the thoracic spine did not include an opinion as to the cause of any diagnosed condition. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>11</sup>

In July 27, 2011 reports, Dr. Yoon merely indicated that appellant had been under his care for an orthopedic condition and could return to modified duty on July 28, 2011. As he did not provide a definitive diagnosis or any explanation of a mechanism of injury, his opinion is not sufficient to establish that appellant sustained an employment-related traumatic injury on April 4, 2011.<sup>12</sup>

Dr. Kharrazi's reports are also insufficient to meet appellant's burden. In his April 13, 2011 report, the first medical evidence dated after the April 4, 2011 work incident, he noted appellant's complaints of widespread pain and found tenderness on palpation of the neck, shoulder and knee. The report is, however, contradictory in that it indicates that cervical spine range of motion was reduced yet also indicates that it was normal. Dr. Kharrazi reported that numerous tests were normal or negative, including a straight leg raise test. However, he reported on April 27, 2011 that appellant's straight leg raise test was positive yet provided no explanation as to why his condition had changed. In that report Dr. Kharrazi also discussed MRI scan study findings of degenerative disc disease of the cervical, thoracic and lumbar spines but did not indicate whether or how this was due to the April 4, 2011 work incident. While he opined on June 9, 2011 that appellant sustained an industrial injury to the cervical, thoracic and lumbar spines and to the right knee and shoulder and referred to his April 11, 2011 report, he merely stated that there was an obvious causal relationship between the diagnosed conditions and the work injury without any further explanation. Medical opinions that are speculative or equivocal in character are of diminished probative value<sup>13</sup> and a medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>14</sup> Dr. Kharrazi's opinion are therefore of diminished probative value on the issue of causal relationship and insufficient to establish that appellant sustained an employment-related injury on April 4, 2011.

Likewise, Dr. Tauber's October 6, 2012 report is insufficient to meet appellant's burden. The report was rendered 18 months after the April 4, 2011 employment incident. Dr. Tauber diagnosed degenerative disc disease of the cervical spine, with radiculopathy; degenerative disc disease of the lumbar spine; right shoulder impingement syndrome with adhesive capsulitis; and chondromalacia of the medial femoral condyle of the right knee. He opined that appellant had multiple conditions that were due to the traumas he sustained in 2009 and 2011 as well as his repetitive work duties and concluded that all diagnoses should be accepted as employment related as it would be impossible to state that his work duties had no effect on these conditions. Dr. Tauber provided no specific explanation as to how the April 4, 2011 incident caused or aggravated appellant's diagnosed conditions.

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<sup>11</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>12</sup> *See T.H.*, 59 ECAB 388 (2008).

<sup>13</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>14</sup> *T.F.*, 58 ECAB 128 (2006).

The Board has long held that an opinion of a physician supporting causal relationship must be supported with affirmative evidence, explained by medical rationale, be based upon a complete and accurate medical and factual background of the claimant<sup>15</sup> and should be expressed in terms of a reasonable degree of medical certainty.<sup>16</sup> None of the medical evidence in this case contains sufficient rationale that explains the relationship between the diagnosed conditions and the April 4, 2011 work incident.<sup>17</sup>

As appellant did not submit sufficient medical evidence to establish that he sustained a diagnosed condition caused by the April 4, 2011 employment incident, he did not meet his burden of proof.

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 did not establish that he sustained an injury causally related to the April 4, 2011 employment incident.

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<sup>15</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>16</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>17</sup> *Dennis M. Mascarenas*, *supra* note 10.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 3, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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