

FACTUAL HISTORY

On March 21, 2012 appellant, then a 49-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging head, neck and back injuries on March 20, 2012 when an elevator gate closed down on top of his head while in the performance of duty. He received continuation of pay and then filed claims for leave without pay for intermittent periods commencing May 5, 2012.

In a report dated March 21, 2012, Dr. Amy B. Caggiula, an emergency medicine specialist, diagnosed neck pain. She restricted appellant from lifting over 10 pounds. Appellant reported a history of hitting the top of his head with a freight elevator door the day before.

In a March 29, 2012 report, Dr. Jeffrey Cohen, an orthopedic surgeon, noted that appellant was in the course of his employment as a custodian laborer when he was unloading a freight elevator. The door slipped and struck his head, injuring his head, cervical spine and mid to low back. Dr. Cohen diagnosed head trauma, acute cervical, thoracic and lumbar trauma and opined that appellant was totally, temporarily disabled for work.

Attending physician form reports dated April 17, May 17 and June 7, 2012, from Dr. Mark Kramer, a Board-certified orthopedic surgeon, reflected a diagnosis of herniated nucleus pulposus (HNP) at L5-S1 and lumbar spinal stenosis. He checked a box "yes" that appellant's condition was caused or aggravated by an employment activity and opined that appellant was totally disabled for work for the period May 20 through July 15, 2012.

On May 25, 2012 appellant underwent an electromyography and nerve conduction studies (EMG/NCS) which revealed evidence of a mild median and ulnar nerve entrapment at right wrist affecting sensory components and moderate right ulnar nerve entrapment at the elbow. He also submitted physical therapy notes dated April 5 and 9, 2012.

In a June 28, 2012 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a July 22, 2012 narrative statement and a July 16, 2012 report from Dr. Kramer, who diagnosed a cervical lumbar condition. In reports dated April 5 through July 26, 2012, Dr. Cohen diagnosed an acute injury to the cervical spine, L5-S1 disc herniation and L4-5 disc bulge of the lumbar spine. He opined that appellant sustained the injuries while unloading a freight elevator in the course of his federal employment. Appellant also submitted physical therapy notes dated May 24 through July 10, 2012.

Radiographs dated April 4, 2012 revealed nonspecific straightening in the cervical spine, a normal lumbar spine and a normal skull. Computerized tomography (CT) scans dated April 4, 2012 revealed a normal brain, degenerative changes of the cervical spine, disc herniation at L5-S1, disc bulge at L4-5 and degenerative changes of the lumbar spine.

By decision dated August 27, 2012, OWCP denied appellant's claim. It found that the medical evidence failed to establish a causal relationship between his head, neck and back conditions and the March 20, 2012 employment incident.

On September 24, 2012 appellant, through his attorney, requested an oral hearing before an OWCP hearing representative. He submitted reports dated April 5 through September 7, 2012 from Dr. Cohen. On August 30, 2012 the hearing representative released appellant to limited duty as of September 1, 2012 with restrictions on lifting no more than 25 pounds. Appellant returned to regular duty without restrictions on September 1, 2012. On September 7, 2012 Dr. Cohen opined that, when the elevator door struck appellant on the head, the impact caused direct injury in accordion fashion to the cervical and lumbar spine. He stated that there was no reason to discredit the history provided by appellant with no other positive physical findings on examination, the history provided to him, the positive testing and treatment to date.

A hearing was held before an OWCP hearing representative on January 10, 2013.

By decision dated March 29, 2013, OWCP's hearing representative affirmed the August 27, 2012 decision. She found that the evidence submitted was not sufficient to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 injury³ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be

² 5 U.S.C. §§ 8101-8193.

³ OWCP regulations 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁴ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

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.⁶

ANALYSIS

OWCP accepted that the employment incident of March 20, 2012 occurred at the time, place and in the manner alleged. The issue is whether appellant's head, neck and low back conditions resulted from the March 20, 2012 employment incident. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between the conditions for which compensation is claimed and the employment incident.

Dr. Cohen diagnosed an acute injury to the cervical spine, L5-S1 disc herniation and L4-5 disc bulge of the lumbar spine and opined that appellant sustained these injuries while unloading a freight elevator in the course of his federal employment. On September 7, 2012 he opined that, when the elevator door struck appellant on the head, the impact caused direct injury in accordion fashion to the cervical and lumbar spine. Dr. Cohen stated that there was no reason to discredit the history provided by appellant with no other positive physical findings on examination, the history provided to him, the positive testing and treatment to date. He failed to adequately explain how appellant hitting his head on an elevator door caused or aggravated the diagnosed head, neck and back conditions. Such generalized statements do not establish causal relationship as they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.⁷ The Board finds that the reports from Dr. Cohen are insufficient to establish that appellant sustained an employment-related injury.

Dr. Kramer diagnosed a cervical lumbar condition, HNP at L5-S1 and lumbar spinal stenosis. In attending physician's reports dated April 17, May 17 and June 7, 2012, he checked a box "yes" indicating that appellant's condition was caused or aggravated by an employment activity. The Board has held that when a physician's opinion on causal relationship consists only of a check mark on a form, without more by way of medical rationale, the opinion is of diminished probative value.⁸ Even though Dr. Kramer indicated with a check mark "yes" that appellant's condition was caused or aggravated by his employment, he failed to provide a sufficient medical rationale explaining the relationship between appellant's head, neck and back conditions and the implicated employment factors.⁹ The Board finds that Dr. Kramer did not explain how the mechanism of the March 20, 2012 employment incident caused or aggravated appellant's conditions.

⁶ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

⁸ 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). See *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ See *Thomas L. Hogan*, 47 ECAB 323, 328-29 (1996).

On March 21, 2012 Dr. Caggiula diagnosed neck pain and restricted appellant from lifting over 10 pounds. He indicated that appellant reported hitting the top of his head with a freight elevator door. Dr. Caggiula did not provide sufficient medical rationale explaining how appellant's conditions were caused or aggravated by hitting his head on March 20, 2012.

The physical therapy notes dated April 5 through July 10, 2012 do not constitute medical evidence as they were not prepared by a physician.¹⁰

Similarly, the April 4, 2012 radiographs and CT scans and May 25, 2012 EMG/NCS are diagnostic in nature and therefore do not address causal relationship.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to a March 20, 2012 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

On appeal, counsel contends that OWCP's decision is contrary to fact and law. For the reasons stated above, the Board finds the attorney's arguments are not substantiated.

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 his head, neck and back conditions are causally related to a March 20, 2012 employment incident, as alleged.

¹⁰ Physical therapists are not physicians under FECA. See 5 U.S.C. § 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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