

as a result of his federal employment duties. He stated that, while working on Ward 4C, he felt nauseous and his leg went numb. Appellant went downstairs to the VA Primary Care Clinic (PCC) and collapsed after being told he needed a computerized tomography (CT) scan. He first became aware of his condition and of its relationship to his employment on November 17, 2011. Appellant notified his supervisor on November 17, 2011.

By letter dated December 16, 2011, the employing establishment controverted the claim stating that appellant did not establish performance of duty. It noted that he informed his supervisor that his leg felt sluggish before he came to work the morning of the claimed incident.

In support of his claim, appellant submitted medical records, diagnostic tests, nursing notes and physical therapy notes dated November 18 through December 16, 2011.

In a November 18, 2011 nursing note, Jotis Lee, a registered nurse, reported that appellant presented at the primary care nursing triage at 10:00 a.m. complaining of breathing and left-sided numbness. Nurse Lee consulted with Dr. Mohammad Zakiullah, a treating physician, who ordered clonidine for appellant.

In a November 18, 2011 emergency room (ER) report, Dr. Richard P. Doncer, Board-certified in family medicine, reported that appellant was admitted to the ER at 2:00 p.m., complaining of left-sided weakness. He reported that appellant went to work early in the morning and felt like his left leg started to drag. Appellant also noticed weakness in his left arm. Over the course of the morning, his condition worsened causing him to seek treatment at the VA PCC around 11:00 a.m. While appellant was at the clinic, the weakness in his left leg worsened, rendering him unable to walk out of the clinic. The PCC suspected that he could have had a stroke and ordered a CT scan. Appellant was then sent to the ER with complaints of nauseousness and weakness in the left arm and leg. Dr. Doncer noted that appellant did not have a history of strokes but had a history of hypertension with elevated blood pressure. A CT scan of the brain revealed white matter disease with no bleed or other acute abnormality. Dr. Doncer diagnosed right hemispheric ischemic stroke.

In a November 22, 2011 medical report, Dr. Whitney J. Scifres, Board-certified in physical medicine and rehabilitation, reported that appellant noticed that he was staggering when he got out of bed to shower on November 18, 2011, prior to coming to work at the VA as a painter. She noted that he arrived at work every morning at 6:30 a.m., prior to his shift to avoid traffic and to get a parking space. Appellant took his typical "power nap" upon arrival and decided to walk to the University of Arkansas for Medical Sciences (UAMS) building to get breakfast before the start of his shift. On his return from breakfast, he noticed that he felt like a "drunk man" and his left leg started to drag. Appellant further noticed it more when he started downstairs to his work area. He obtained his supplies and proceeded to work but felt nauseous with left arm numbness. Appellant visited the PCC and was told he needed a CT scan. When attempting to leave, he fell upon rising. After completion of the CT scan, appellant was transferred to the ER. A November 18, 2011 magnetic resonance imaging scan of the brain and neck showed a focal area of restricted diffusion involving the right frontoparietal periventricular white matter and the posterior external capsule suggestive of an acute infarction. Physical therapy was recommended.

By letter dated March 6, 2012, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and asked that he respond to the provided questions within 30 days. In another March 6, 2012 letter, OWCP requested that the employing establishment provide information regarding his employment duties and any information pertaining to the claimed November 18, 2011 incident.

In a March 25, 2012 narrative statement, appellant reported that his symptoms and condition began on November 17, 2011, noting that his only preexisting condition was high blood pressure. He stated that his tour of duty began at 7:30 a.m. and ended at 4:00 p.m. Appellant stated that he drove to work around 5:30 a.m. and took a nap before walking to the UAMS cafeteria at 6:45 a.m., which was connected to the VA hospital. After returning from breakfast, he reported to the assigned area on Ward 4D to complete a work order to paint patches on walls. Appellant was not on a ladder and had not begun to paint. He suddenly became nauseated and felt very sick. When it worsened, appellant went to the PCC and Dr. Zakiullah recommended that he get a CT scan. When he attempted to stand up from the chair, he fell to the floor. Appellant stated that he did not have any falling or fainting episodes prior to November 18, 2011, did not know if he had any visible trauma from his fall and did not know if he struck any objects when falling to the floor because he was having a stroke. In support of his claim, he provided a position description for painter-vinyl wallpaper hanger.

In an undated narrative statement, Mike Armack, appellant's supervisor, reported that he concurred with appellant's claim. He stated that he did not know of any other fall or fainting episode that may have occurred prior to November 18, 2011. Mr. Armack further stated that appellant was in the nurse's office when he fell so the physician and nurse witnessed his fall. He reported that, on the morning of the November 18, 2011 incident, appellant informed him of the incident and told him that his leg felt sluggish and heavy.

By decision dated June 11, 2012, OWCP denied appellant's claim on the grounds that the evidence submitted was not sufficient to establish that he was injured in the performance of duty. It noted that the medical evidence of record failed to establish that the injury occurred during the course of employment and within the scope of compensable work factors.

LEGAL PRECEDENT

In providing for a compensation program for federal employees, Congress did not contemplate an insurance program against any and every injury, illness or mishap that might befall an employee contemporaneous or coincidental with his or her employment. Liability does not attach merely upon the existence of an employee-employer relation. Instead, Congress provided for the payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.²

The Board has interpreted the phrase while in the performance of duty to be the equivalent of the commonly found requisite in workers' compensation law of arising out of and in the course of employment. In the course of employment deals with the work setting, the

² See 5 U.S.C. § 8102(a).

locale and time of injury whereas, arising out of the employment, encompasses not only the work setting but also a causal concept, the requirement being that an employment factor caused the injury. In addressing this issue, the Board has stated that in the compensation field, to occur in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be stated to be engaged in his or her master's business; (2) at a place where he or she may reasonably be expected to be in connection with the employment; and (3) while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto.³

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁴

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁵ The opinion of the physician 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of 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.⁶

ANALYSIS

The Board finds that appellant failed to establish that he sustained a stroke in the performance of duty as a VA painter.

Appellant must establish all of the elements of his claim in order to prevail. He must prove his employment, the time, place and manner of injury, a resulting personal injury and that his injury arose in the performance of duty. Appellant alleged that he sustained a stroke as a result of his federal employment duties as a painter.

Appellant has failed to establish that his injury occurred in the performance of duty as he did not provide sufficient detail to establish that an occupational exposure occurred as alleged.⁷

³ *Kathryn S. Graham Wilburn*, 49 ECAB 458 (1998).

⁴ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁵ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁶ *James Mack*, 43 ECAB 321 (1991).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

On his Form CA-2, he stated that he was working on Ward 4C, his stomach was nauseous and his leg went numb. Appellant failed to describe the circumstances of his alleged injury and the duties he was performing which caused his injury. His March 25, 2012 narrative statement notes that, on November 18, 2011, he returned from breakfast to the assigned area on Ward 4D to complete a work order, but had not begun to paint and was not on a ladder. The record is silent on what employment duties appellant was performing from 7:30 a.m., when his tour of duty began, to 10:00 a.m., when he visited the PCC. The record only establishes that he was not painting and had not climbed a ladder on November 18, 2011. As appellant filed a CA-2 form, he has alleged that his stroke was caused by cumulative trauma produced by his work environment over a period longer than a single workday or shift.⁸ However, he failed to provide an adequate description of his employment duties, which he believed caused or aggravated his condition to establish that an occupational exposure occurred as alleged.

The medical evidence of record further fails to substantiate appellant's claim. In his November 18, 2011 ER report, Dr. Doncer provided a diagnosis of right hemispheric ischemic stroke. He reported that appellant went to work early in the morning and felt like his left leg started to drag. Over the course of the morning, appellant noticed his condition worsening and went to the VA PCC around 11:00 a.m. Dr. Scifres' November 22, 2011 report noted that, on November 18, 2011, appellant was staggering when he got out of bed to shower in the morning. She noted that appellant arrived at work at 6:30 a.m., prior to his shift to avoid traffic, get a parking space and to take a "power nap" before going to UAMS for breakfast. On his return from breakfast, appellant noticed that he felt like a "drunk man" and his left leg started to drag. He further noticed it more when he started downstairs to his work area. Appellant obtained his supplies and proceeded to work but felt nauseous with left arm numbness. He visited the PCC and fell when attempting to leave.

As appellant himself has alleged that his symptoms began on November 17, 2011, it is unclear if he suffered a stroke on November 17, 2011 at the onset of his symptoms, on the morning of November 18, 2011 prior to the start of his work shift or during the course of employment while performing his federal employment duties on November 18, 2011. Though his symptoms may have persisted into his workday on November 18, 2011, the medical reports contain no discussion of his federal employment duties as a VA painter, how many hours he worked a day and the frequency of other physical movements and tasks to establish an alleged occupational exposure. The reports also provide no information on when appellant suffered his stroke, whether it was during the course of employment and whether his employment duties caused or aggravated his condition. Thus, the medical reports of record fail to factually establish that an occupational exposure occurred while in the performance of duty.

Moreover, not only must appellant establish that an injury occurred in the performance of duty as alleged, but he must also establish that his disability and/or specific condition for which compensation is claimed are causally related to his injury by submitting rationalized medical opinion evidence.⁹ The medical reports of record provide a firm diagnosis of right hemispheric ischemic stroke. However, the condition cannot be connected to an alleged occupational

⁸ 20 C.F.R. § 10.5(q).

⁹ *Marie St. Clair*, Docket No. 03-1688 (issued September 10, 2003).

exposure in the workplace as the physicians failed to provide an opinion on the cause of appellant's stroke.¹⁰ The reports of Dr. Doncer and Dr. Scifres failed to describe with any specificity when appellant suffered his stroke, the type work appellant was engaged in as a VA painter and how this work could cause or aggravate his medical condition. The physicians failed to describe a mechanism of injury, did not determine that his condition was work related and did not offer a rationalized opinion on the issue of causal relationship.¹¹ 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.¹² The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹³ As Dr. Doncer and Dr. Scifres failed to provide a rationalized opinion that appellant suffered a stroke in the performance of duty as a result of his employment activities as a VA painter, their reports are insufficient to meet his burden of proof.¹⁴

The remaining medical evidence of record, including diagnostic studies, provide no new information regarding the factual circumstances surrounding appellant's stroke and fail to provide any opinion on causal relationship.¹⁵ Moreover, the physical therapy reports are of no probative value as physical therapists are not physicians under FECA.¹⁶ Thus, the medical evidence of record fails to support that appellant suffered a stroke in the performance of duty as a VA painter.¹⁷

As appellant has failed to establish an occupational exposure as a result of his work duties, he has also failed to establish that his injury occurred while in the performance of duty. On appeal, his counsel argued that appellant suffered his stroke sometime between 7:30 a.m., when his shift started, to 10:00 a.m., when he went down to the PCC. As previously mentioned, the record before the Board does not contain any information regarding what work activities appellant was performing, which he alleged caused or aggravated his condition. As appellant has

¹⁰ *C.f. S.A.*, Docket No. 10-1786 (issued May 4, 2011) (where the Board found that appellant established that the incident occurred as alleged, as there were no inconsistent statements from appellant or other evidence refuting the occurrence of the alleged incident).

¹¹ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

¹² *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁴ *Supra* note 12.

¹⁵ *S.E.*, *supra* note 12.

¹⁶ Nurses, physician's assistants, physical and occupational therapists are not "physicians" as defined by FECA, their opinions regarding diagnosis and causal relationship are of no probative medical value. 5 U.S.C. § 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists and clinical psychologists.

¹⁷ *R.M.*, Docket No. 11-1921 (issued April 10, 2012).

alleged an occupational disease, he must factually establish the regularly assigned work duties he attributes to the cause of his condition.¹⁸ Moreover, though he has established a firm medical diagnosis, he failed to submit rationalized medical evidence from a physician, which describes his employment duties and provides an explanation on how these duties caused his injury.¹⁹ The record lacks any evidence establishing the factual element of appellant's claim, namely, that a claimed occupational exposure caused him medical injury or disease.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.²⁰ An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.²¹ Appellant failed to provide evidence to prove the fact of injury, its time, place and manner and that the injury was causally related to his federal employment. Because he did not submit sufficient evidence demonstrating the alleged occupational exposure actually occurred as alleged, OWCP properly denied his claim.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty as a painter.

¹⁸ An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. *Supra* note 8. A traumatic injury means a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee).

¹⁹ *Supra* note 12.

²⁰ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

²¹ *D.D.*, 57 ECAB 734 (2006).

ORDER

IT IS HEREBY ORDERED THAT the June 11, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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