

FACTUAL HISTORY

On June 13, 2011 appellant, then a 57-year-old sales associate, filed a traumatic injury claim alleging that she tripped in the performance of duty on October 9, 2009 injuring both shoulders and both knees.

In a letter dated June 29, 2011, OWCP requested additional factual and medical evidence in support of appellant's claim. By decision dated July 28, 2011, it denied her claim on the grounds that she failed to provide any medical evidence establishing an injury.

Appellant requested reconsideration on December 12, 2011 and submitted additional evidence in support of her claim. She first sought medical treatment on November 2, 2009 and received a diagnosis of shoulder region pain. On April 1, 2011 appellant sought treatment for her knees.

In a report dated August 21, 2011, Dr. Siva Ayyar, a physician Board-certified in occupational medicine, examined appellant and noted her history of tripping over a bag in the performance of duty on October 9, 2009 and striking her shoulders and knees. She stated that a magnetic resonance imaging (MRI) scan on April 23, 2011 demonstrated a full thickness tear of the right supraspinatus tendon. Dr. Ayyar noted that, while appellant struck her knees in the fall, her knee pain did not arise for several months after. She stated that contusion of the bilateral shoulders was due to the employment incident of falling. Dr. Ayyar also stated, "I believe that the right shoulder rotator cuff tear was either directly caused by or accelerated by the slip and fall industrial injury of October 9, 2009." She stated that the weight of the medical evidence suggested that appellant's current bilateral knee conditions were not due to her October 9, 2009 fall as she did not seek treatment for this condition until March 15, 2010.

In a note dated October 28, 2011, Dr. John Harbough, a Board-certified family practitioner, stated that appellant's right shoulder problem occurred when she fell and had instant pain. He noted that she also did repetitive work including lifting, pushing and pulling as a window clerk. Dr. Harbough opined that appellant had a work-related injury.

By decision dated March 15, 2012, OWCP accepted appellant's claim for bilateral contusions of the shoulder and upper arm. In a separate decision of the same date, it reviewed the medical evidence and found that the reports were not sufficiently detailed to establish that she sustained a rotator cuff tear or bilateral knee conditions as a result of her October 2009 fall. OWCP also noted that Dr. Ayyar negated a causal relationship between appellant's knee condition and her employment injury.²

² Following OWCP's decision, on August 15, 2012 appellant submitted additional new evidence. As OWCP did not consider this evidence in a decision properly before the Board, the Board may not consider this evidence for the first time on appeal. 20 C.F.R. § 501.2. Furthermore, the Board and OWCP cannot simultaneously exercise jurisdiction over the same issue at the same time. See 20 C.F.R. § 501.2(c)(3). An OWCP decision issued while the Board has jurisdiction of the matter in dispute is null and void. See *Douglas E. Billings*, 41 ECAB 880 (1990). Because OWCP issued a decision accepting appellant's claim for right rotator cuff tear on December 13, 2012 after September 13, 2012 the date that the Board assumed jurisdiction, this decision of OWCP is null and void.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of FECA and 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 or specific condition for which compensation is claimed is 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

OWCP defines 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.”⁶ 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.⁷ Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.⁸

ANALYSIS

OWCP has accepted that appellant fell in the performance of duty on October 9, 2009 and sustained bilateral contusions of her shoulder and upper arm. However, it denied her claim for right rotator cuff tear and bilateral knee conditions.

The Board finds that appellant has not met her burden of proof in establishing that she sustained the claimed conditions as a result of her accepted employment injury. Appellant has not submitted any medical evidence opining that she sustained knee injuries on October 9, 2009. Furthermore, Dr. Ayyar specifically negated a causal relationship between appellant’s knee condition in 2011 and her 2009 employment injury.

In regard to appellant’s right rotator cuff condition, Dr. Ayyar attributed this condition to appellant’s employment injury. He stated, “I believe that the right shoulder rotator cuff tear was either directly caused by or accelerated by the slip and fall industrial injury of October 9, 2009.”

³ 5 U.S.C. §§ 8101-1893.

⁴ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

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

⁶ 20 C.F.R. § 10.5(ee).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *J.Z.*, 58 ECAB 529 (2007).

The Board finds however that Dr. Ayyar's report does not contain the necessary medical rationale to establish a causal relationship between appellant's condition and her injury. A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.⁹ Medical rationale includes a physician's detailed opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.¹⁰ As Dr. Ayyar did not provide the necessary medical reasoning to support his conclusions, appellant has not met her burden of proof in establishing this condition.

Dr. Harbough also addressed the issue of causal relationship in his October 28, 2011 note. He stated that appellant's right shoulder problem occurred when she fell and had instant pain. Dr. Harbough also noted that she also did repetitive work including lifting, pushing and pulling as a window clerk. He opined that appellant had a work-related injury and diagnosed rotator cuff tear. This report is also insufficient to meet appellant's burden of proof as it lacks medical rationale. Dr. Harbough does not explain how appellant's fall would have resulted in a rotator cuff tear.

Appellant has not submitted the necessary medical opinion evidence to establish the additional conditions as resulting from her October 9, 2009 employment injury.

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 meet her burden of proof in establishing additional bilateral knee or right rotator cuff conditions as due to her October 9, 2009 employment injury.

⁹ *T.F.*, 58 ECAB 128 (2006).

¹⁰ *A.D.*, 58 ECAB 149 (2006).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 22, 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