

duties on October 21, 2012. He stated that his injury occurred when he was performing patient care and the patient inadvertently struck him in the right shoulder.²

In progress notes dated October 22, 2012, Dr. David Chang, a family practitioner, stated that appellant's original injury date was August 26, 2012 and described the incident as an injury to the right shoulder while transferring a patient from a wheelchair. He also stated that appellant had been progressing well with physical therapy until October 21, 2012, when a patient almost fell and grabbed onto his right arm.

In progress notes dated November 5, 2012, Dr. Jason Brayley, a Board-certified family physician, stated that appellant was being seen for evaluation of a right shoulder injury sustained on July 26, 2012. In reference to the incident giving rise to the original injury, he stated that appellant sustained a right shoulder injury when attempting to transfer a patient from a wheelchair. Dr. Brayley also stated that appellant had been going to physical therapy and was doing well until another patient fell forward directly onto his right shoulder. He did not note the date of this later incident in his progress note dated November 5, 2012, but in a Form CA-17 duty status report dated December 3, 2012, he noted that the date of injury was October 21, 2012 and that it occurred when appellant braced a patient from falling. In an insurer activity prescription form dated November 11, 2012, Dr. Brayley recommended that appellant work a modified-duty position from November 2 to December 14, 2012, stating his key objective finding that appellant had weakness and reduced range of motion in his right shoulder.

In progress notes dated December 18, 2012, Dr. Brayley stated that appellant was being seen for a follow-up evaluation of right shoulder pain. He noted that he had seen him in November, but did not describe the incidents giving rise to appellant's injury. Appellant also submitted physical therapy notes dating from November 8 to December 23, 2012.

By letter dated February 28, 2013, OWCP requested additional medical evidence from appellant on the grounds that he had not submitted sufficient evidence to establish a causal relationship between the October 21, 2012 incident and his claimed injury. It afforded him 30 days to submit this additional evidence.

Appellant submitted an authorization request for physical therapy dated March 7, 2013.

By decision dated April 2, 2013, OWCP denied appellant's claim for traumatic injury to the right shoulder on the grounds that the medical evidence submitted was not sufficient to establish that his claimed injury was causally related to the accepted work-related incident of October 21, 2012. It accepted that he was a federal civilian employee who filed a timely claim; that the October 21, 2012 incident occurred as described; that a medical condition had been diagnosed; and that appellant was in the performance of duty at the time of the incident.

² The Board notes that on August 29, 2012 appellant had previously filed a traumatic injury claim (Form CA-1) relating to a right shoulder condition, under claim number xxxxxx905. The date of injury for this claim was August 26, 2012.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 injury⁴ 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.⁵

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.⁶

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.⁷ 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.⁸ 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.⁹

ANALYSIS

Appellant alleged that, on October 21, 2012, he sustained an injury to the right shoulder when he was performing patient care and the patient inadvertently struck him. OWCP accepted that he was a federal civilian employee who filed a timely claim; that the October 21, 2012

³ 5 U.S.C. §§ 8101-8193.

⁴ OWCP’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of 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).

⁵ *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Id.* *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

⁷ *See J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

⁸ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁹ *James Mack*, 43 ECAB 321, 329 (1991).

incident occurred as described; that a medical condition had been diagnosed; and that appellant was in the performance of duty at the time of the incident. The Board finds that appellant failed to meet his burden of proof to provide sufficient medical evidence establishing that he sustained an injury as a result of the October 21, 2012 employment incident.

Appellant submitted progress notes dated October 22, 2012 from Dr. Chang who stated that appellant's original injury date was August 26, 2012, and described the incident as an injury to the right shoulder while transferring a patient from a wheelchair. Dr. Chang also noted that appellant had been progressing well with physical therapy until October 21, 2012, when a patient almost fell and grabbed onto appellant's right arm.¹⁰ The Board notes that Dr. Chang provided findings on examination, a firm diagnosis of right shoulder strain and a description of the October 21, 2012 employment incident. Dr. Chang did not, however, offer an opinion as to whether the October 21, 2012 employment incident caused or aggravated appellant's condition. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.¹¹ Accordingly, Dr. Chang's opinion is insufficient to establish appellant's claim.

Appellant also submitted reports and forms from Dr. Brayley. In progress notes dated November 5, 2012, Dr. Brayley stated that appellant sustained a right shoulder injury when attempting to transfer a patient from a wheelchair. He also noted that appellant had been going to physical therapy and was doing well until another patient fell forward directly onto his right shoulder. Dr. Brayley did not state the date of this later incident in his progress note dated November 5, 2012. He diagnosed appellant with multifactorial right shoulder pain and evidence of mild acromioclavicular degenerative joint disease and a possibility of small anterior labral tearing. In a Form CA-17 duty status report dated December 3, 2012, Dr. Brayley noted that the date of injury was October 21, 2012 and that it occurred when appellant braced a patient from falling, but did not state which part of the body was affected. In an insurer activity prescription form dated November 11, 2012, he recommended that appellant work a modified-duty position from November 2 to December 14, 2012, stating his key objective finding that appellant had weakness and reduced range of motion in his right shoulder. In progress notes dated December 18, 2012, Dr. Brayley stated that appellant was being seen for a follow-up evaluation of right shoulder pain. He noted that he had seen appellant in November, but did not describe the incidents giving rise to appellant's injury. Dr. Brayley diagnosed appellant with right shoulder pain with prior evidence of mild rotator cuff impingement, with concurrent subacromial bursitis and some evidence of mild acromioclavicular degenerative joint disease.

The Board notes that, like Dr. Chang, Dr. Brayley provided findings on examination, a firm diagnosis, and descriptions of the October 21, 2012 employment incident, but failed to offer an opinion explaining how the employment incident caused or aggravated appellant's condition. Dr. Brayley merely described the incident alleged to have caused or aggravated appellant's

¹⁰ The Board notes that Dr. Chang's report references another traumatic injury claim, case no. xxxxxx905, that was being developed at the same time as this claim and that the other claim was for an incident alleged to have injured the same member on August 26, 2012.

¹¹ *John W. Montoya*, 54 ECAB 306, 308 (2003).

diagnosed condition without offering an explanation of how the incident resulted in such condition. The Board has found that 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 Dr. Brayley's reports and forms, therefore, also fail to establish causal relationship.

Appellant also submitted progress notes by physical therapists. The Board has noted, however, that physical therapists are not physicians as defined under FECA, and therefore, these notes are of no probative value.¹³

The Board finds that the record does not contain sufficient medical evidence to establish appellant's claim, because he did not meet his burden of proof to establish that his right shoulder condition was causally related to the October 21, 2012 employment incident.

Appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁴ 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 his right shoulder condition was causally related to the October 21, 2012 employment incident.

¹² *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271, 280 (2007).

¹³ *See* 5 U.S.C. § 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 n.4 (2000).

¹⁴ 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the April 2, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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