

September 21, 2011. His injury occurred as he aided in the arrest of an individual he pushed against a wall. Appellant's hip began to hurt several days later.

On October 12, 2011 OWCP requested additional medical evidence from appellant. It noted that he had not submitted any medical evidence with his claim form. OWCP afforded appellant 30 days to submit additional evidence.

In response, appellant submitted an October 11, 2011 prescription slip from Dr. Michelle D. Harris, an internist, who diagnosed left hip strain and prescribed physical therapy. Appellant also submitted notes from John T. Comerouski, a physical therapist. On October 24, 2011 Mr. Comerouski advised Dr. Harris of appellant's statement of the events that led to his injury. Appellant reported that on September 21, 2011 he was arresting an individual and twisted suddenly, feeling a pull on the outside of his left hip region that extended along the lateral leg to his knee. He reported that his symptoms had been variable day-to-day, but the left hip was painful every day.

By decision dated November 17, 2011, OWCP denied appellant's claim, finding that the medical evidence was not sufficient to support that his left hip condition was causally related to the September 21, 2011 employment incident.

On December 15, 2011 appellant requested review of the written record by an OWCP hearing representative.

In an attending physician's report dated October 12, 2011, Dr. Harris noted that appellant stated that his injury occurred when he attempted to subdue an assailant and fell to the ground. She diagnosed appellant with left hip strain and low back pain, noting upon examination that he experienced pain with flexion and abduction. Dr. Harris checked a box indicating that the condition was caused or aggravated by an employment activity, noting that appellant "fell while subduing suspect." In a work capacity evaluation dated October 21, 2011, she outlined work restrictions including limitations on sitting, walking, bending, squatting and stooping. Dr. Harris did not address whether appellant's injuries were work related.

In a November 17, 2011 job offer from the employing establishment, the employing establishment offered appellant a temporary-duty assignment with work restrictions including no heavy lifting, no excessive bending and no prolonged standing.

In a December 1, 2011 addendum, Mr. Comerouski recommended a plan of physical therapy treatment for appellant on a basis of two to three visits per week over a four- to six-week period. This would be followed by a reevaluation by Dr. Harris who signed the addendum and indicated that she agreed with the proposed plan of care.

Appellant also submitted a letter dated December 7, 2011 with an illegible signature, written on Dr. Harris's letterhead. The letter stated that appellant was undergoing physical therapy and that he would need at least six to eight weeks and follow-up visits, with a reevaluation of his condition to occur in February 2012.

By decision dated January 3, 2013, an OWCP hearing representative affirmed the November 17, 2011 decision. He found that Dr. Harris had not provided an accurate factual

history of the claimed injury. The hearing representative noted that the medical evidence provided by Dr. Harris included a description in which appellant had fallen to the ground as the mechanism of injury. This was not consistent with appellant's description on his Form CA-1, which described the mechanism of injury as pushing an individual against a wall in the course of an arrest.

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

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.⁶ 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.⁷ The weight of the medical evidence is determined by its reliability, its probative

² 5 U.S.C. §§ 8101-8193.

³ OWCP's 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 *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Id.* *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

⁶ *See J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

⁷ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

Appellant alleged that on September 21, 2011 he sustained a hip injury when he aided in the arrest of an individual that he pushed against a wall. OWCP accepted that the September 21, 2011 incident occurred as described. It denied the claim, finding that the medical evidence was premised on an incorrect history of the accepted incident. The Board finds that appellant failed to meet his burden of proof to provide sufficient medical evidence to establish an injury as a result of the September 21, 2011 employment incident.

The only narrative medical report OWCP received in support of the claim was that of Dr. Harris. In an attending physician's report dated October 12, 2011, Dr. Harris listed a history that appellant attempted to subdue an assailant and fell to the ground. She diagnosed a left hip strain and low back pain, noting upon examination that he experienced pain with flexion and abduction. Dr. Harris checked a box indicating that the condition was caused or aggravated by the employment activity, writing that appellant "fell while subduing suspect." As noted, appellant must submit medical evidence with a rationalized opinion on causal relationship between the diagnosed conditions and the identified employment factors. In determining whether a medical report provides a rationalized opinion on causal relation is whether it is based on a complete and accurate factual background.⁹ Dr. Harris's attending physician's report conflicts with the description of the September 21, 2011 incident provided by appellant on his Form CA-1. Appellant stated that he helped in the arrest of an individual who he pushed against a wall. He made no mention of a fall. Dr. Harris did not address how the accepted incident, of appellant pushing an individual against a wall during an arrest, caused a left hip injury. Her report is based on an inaccurate factual background. Because it is based on such an incomplete or inaccurate factual background, it is of diminished probative value on the issue of causal relationship, and is insufficient to support appellant's claim.

Appellant also submitted on October 21, 2011 a prescription slip, a Form CA-20 attending physician's report, and an October 21, 2011 Form OWCP-5c work capacity evaluation from Dr. Harris. Neither the prescription slip nor the Form OWCP-5c work capacity evaluation address the accepted incident as contributing to or causing appellant's injury. Medical evidence that does not address the causal relationship between a diagnosed condition and specified work-related factors is of diminished probative value on the issue of causal relationship.¹⁰

Appellant also submitted a physical therapy notes from Mr. Comerouski in support of his claim. A physical therapist is not a "physicians" as defined under FECA and, therefore, their medical reports do not qualify as probative medical evidence supportive of a claim for federal

⁸ *James Mack*, 43 ECAB 321, 329 (1991).

⁹ *See C.G.*, Docket No. 11-1087 (issued December 2, 2011); *Joseph N. Fassi*, 42 ECAB 677, 679 (1991).

¹⁰ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

workers' compensation, unless such medical reports are countersigned by a physician.¹¹ All but one of the documents from Mr. Comerouski lack signatures by a physician.¹² Therefore, these documents do not qualify as probative medical evidence in support of appellant's claim.

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 injury to his left hip or lower back on September 21, 2011 in the performance of duty.

ORDER

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

Issued: October 25, 2013
Washington, DC

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

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

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

¹¹ See 5 U.S.C. § 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 n.4 (2000).

¹² The only document containing a signature from a physician is the December 1, 2011 addendum to Mr. Comerouski's physical therapy evaluation summary. Dr. Harris agreed with the proposed plan of care. Her signature indicates only her agreement with the proposed plan of care and not her agreement with any medical conclusions reached by Mr. Comerouski.