

repetitive motion, and he described the injury as spasms in the neck and back, right side. The reverse of the claim form indicated that appellant had been off work intermittently since July 3, 2007. The record contains a limited-duty job offer accepted by appellant on August 6, 2007.

With respect to medical evidence, Dr. Zafer Termanini, a Board-certified orthopedic surgeon, diagnosed sciatica in a July 12, 2007 note. He indicated that appellant was disabled from July 8 to 16, 2007.

By decision dated September 7, 2007, OWCP denied the claim for compensation. It found that the factual basis for the claim was “unclear or unknown” and the medical evidence was insufficient to establish the claim.

On September 17, 2007 appellant submitted a September 4, 2007 report from Dr. Marc Fillipone, a Board-certified physiatrist, who provided a history and results on examination. Dr. Fillipone diagnosed lumbosacral radiculitis, cervical radiculitis and internal derangement of the right shoulder. He opined that appellant’s conditions were the result of “repetitive stress while working for the [employing establishment].”

On December 3, 2007 appellant submitted an October 26, 2007 report from Dr. Fillipone, who again provided a history of July 3, 2007 incident and reviewed the medical history. Dr. Fillipone diagnosed cervical radiculopathy and lumbar radiculitis. He opined that the above conditions were “directly and solely the result of the injuries sustained by the patient on [July 3, 2007] while working for the [employing establishment].”

OWCP received a request for reconsideration on September 9, 2008. In a letter dated November 3, 2008, appellant’s representative requested that OWCP delay a decision on the reconsideration request, as medical evidence regarding emergency room treatment on July 5, 2007 had been requested.

No further action in the case occurred until appellant’s new representative submitted a March 20, 2013 letter, noting the request for reconsideration and the reports from Dr. Fillipone dated September 4 and October 26, 2007.

In a decision dated June 17, 2013, OWCP stated that it was modifying the prior decision to reflect that the basis for denial was not a factual element, but instead the requirement of medical evidence on the issue of causal relationship. It discussed the September 4, 2007 report from Dr. Fillipone, without discussing the content of the October 26, 2007 report.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.² In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally “fact of injury” consists of two

² *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.³

ANALYSIS

In the present case, appellant has claimed a traumatic injury on July 3, 2007 when he was lifting and pulling letter trays. Although the initial decision stated that the factual basis of the claim was “unclear or unknown,” he identified the job duties he performed on July 3, 2007 and there was no contrary evidence. The June 17, 2013 decision accepted that an incident occurred as alleged, and therefore the issue was whether the medical evidence was sufficient to establish the claim.

In this regard appellant submitted reports from Dr. Fillipone following the September 7, 2007 OWCP decision. The September 4, 2007 report, which was discussed by OWCP in its June 17, 2013 decision, provided a complete history but referred to “repetitive stress” in federal employment as the cause of injuries that included lumbosacral radiculitis, cervical radiculitis and internal derangement of the right shoulder. This reference to repetitive stress activities did not explain how the particular activities appellant stated that he performed on July 3, 2007 would have caused the diagnosed conditions.

Appellant also submitted an October 26, 2007 report from Dr. Fillipone. OWCP did not review this report in its June 17, 2013 decision. It is well established that, since the Board’s jurisdiction of a case is limited to reviewing the evidence which was before OWCP at the time of its final decision, it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision.⁴ As the Board’s decisions are final as to the subject matter appealed, it is critical that all evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.⁵

The case will be remanded to OWCP to properly review the relevant evidence of record. After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds the case is not in posture for decision.

³ See *John J. Carlone*, 41 ECAB 354, 357 (1989).

⁴ *William A. Couch*, 41 ECAB 548 (1990).

⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2013 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: April 25, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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