

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty on June 4, 2013, as alleged.

FACTUAL HISTORY

On June 10, 2013 appellant, then a 51-year-old paralegal specialist, filed a traumatic injury claim alleging that on June 4, 2013, when she was returning to her cubicle from using the bathroom, another employee rounded the corner and walked directly into her wheelchair. The employee made contact with appellant's left knee before landing on her and then falling over appellant's right shoulder onto the floor behind her. Appellant's wheelchair teetered on two wheels before stabilizing back on the ground. As a result of the incident, her left knee was bruised, with a puncture wound formed on the inside of her left leg, and she was unable to straighten her knee. When she went to a chiropractor a few days later, appellant was told that her knee had popped out of its socket.

By letter dated June 24, 2013, OWCP asked that appellant submit further information to support her claim.

In a June 12, 2013 clinical provider note from Bluegrass Urgent Care, Dr. Robert R. So, a general practitioner, stated under history of illness that "This was not a job-related problem." Dr. So indicated that appellant's knee injury happened after a collision with someone at work about one week prior. He listed her primary injuries as a soft tissue injury of the left knee and contusion. Dr. So noted that the x-rays of appellant's left knee taken on June 12, 2013 revealed no evidence of an acute fracture. He noted no prior injury to her left lower extremity.

In a June 24, 2013 attending physician's report, Dr. Klaude Kocan, a chiropractor, described the history of the injury by noting that appellant was sitting in her wheelchair when a coworker walked into her and fell over her. Appellant was in a wheelchair due to multiple sclerosis. Dr. Kocan diagnosed lumbar hip strain/sprain and knee sprain. He noted that he performed adjustments, rehabilitation stretching, manual therapy, stem therapy and rehabilitation exercises. Dr. Kocan checked a box that he believed appellant's condition was caused or aggravated by her employment activity. Appellant also submitted chiropractic treatment notes which reflect that she commenced chiropractic treatment on January 18, 2013. She complained of weak legs and hips and noted that these symptoms began in 2002. Appellant also indicated that she had multiple sclerosis with difficulty standing and walking. A January 21, 2013 treatment plan noted that appellant had neck pain with numbness in her left foot, left leg, right foot and right leg. The chiropractic notes further indicated treatment to her legs, hip, shoulder and neck. In a May 20, 2013 note, treatment is indicated for feet, ankles, knees and hips.

On July 10, 2013 the employing establishment controverted that the incident occurred as alleged.

By decision dated September 25, 2013, OWCP denied appellant's claim. It determined that the June 4, 2013 incident occurred as alleged but found that the medical evidence was not sufficient to establish a left knee injury as causally related to the accepted incident.

In a September 30, 2013 report, Dr. So advised that the statement in his June 12, 2013 report indicating “This was not a job-related problem” was a clerical error made by a medical assistant. He noted that appellant was injured while working as stated in other sections of her record. The addendum was not signed and contains the initials “J.P.”

In an October 7, 2013 report, Dr. Kocan stated that on June 7, 2013 appellant entered the office complaining of left knee pain and right hip pain caused when a coworker ran into her wheelchair. He noted that the impact caused a moderate-sized bruise on the inside of her left knee which hindered her ability to walk without assistance, resulting in an increase in right hip and lower back pain. Appellant’s initial diagnosis was left knee contusion, left knee strain/sprain and hip -- lumbar strain/sprain. He noted that the diagnoses were determined by visual evaluation with noted bruising and swelling with altered gait as well as ranges of motion palpation and corresponding orthopedic testing. Dr. Kocan stated that Kentucky law provided for chiropractic care by adjusting or manipulating the subluxation of the articulations of the human spine and its adjacent tissues. He noted that appellant’s diagnosis had been appropriately found by the above-mentioned methods with no need for x-rays. Dr. Kocan concluded that appellant was accurately diagnosed and her treatment was medically necessary for her work injury and comorbidity factors.

On October 22, 2013 appellant requested reconsideration.

In a decision dated February 7, 2014, OWCP denied modification of the September 25, 2013 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.³

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 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 or exposure, which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵ The medical evidence required to

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁶

ANALYSIS

OWCP determined that appellant established that the June 4, 2013 incident occurred as alleged. It denied her claim as it found that she did not establish a medical condition resulted from the accepted employment incident.

Appellant submitted reports from her attending chiropractor, Dr. Kocan. Under FECA a chiropractor is a physician only to the extent that the reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.⁷ Dr. Kocan stated that an x-ray was not needed to make his diagnosis under Kentucky law. The Board notes that under the federal regulations relevant to claims under FECA, the diagnosis of spinal subluxation must be demonstrated by x-ray.⁸ Accordingly, the Board finds that Dr. Kocan does not qualify as a physician under FECA. Dr. Kocan's reports are not considered probative medical evidence to establish a causal connection between a diagnosed medical condition and the accepted employment incident.

Appellant also submitted a June 12, 2013 report by Dr. So and an addendum with the initials "J.P." dated September 30, 2013. Dr. So diagnosed appellant with a soft tissue injury in her left knee and a contusion. He advised that her knee injury happened after a collision at work one week prior to the June 12, 2013 visit. The Board finds that the report of Dr. So does not constitute a well-rationalized medical opinion addressing how the accepted employment incident of June 14, 2012 caused her medical condition. OWCP noted that the addendum to the June 12, 2013 report was not signed by Dr. So but by a person identified only as "J.P." Dr. So discussed the employment incident and pointed out that the contrary general statement that the injury was not work related was a mistake made by his medical assistant. The report is inadequate as it does not provide a rationalized medical explanation as to how appellant sustained a medical condition related to the accepted employment incident. Furthermore, the Board notes that while there are indications in the record that appellant had received chiropractic treatment prior to the employment incident and that this treatment included some work on appellant's left lower extremity, Dr. So stated that there was no prior injury to appellant's left lower extremity. The

⁶ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁷ Section 8101(2) of FECA provides as follows: "(2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary." See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁸ See 20 C.F.R. § 10.311(b).

Board finds that the fact that Dr. So was unaware of prior treatment on appellant's left lower extremity and the fact that his opinion is not sufficiently well rationalized with regard to causal relationship renders Dr. So's report insufficient to establish causal relationship.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was caused by her employment is sufficient to establish causal relationship.⁹ As appellant did not submit a rationalized medical opinion establishing a causal relationship between her accepted employment activities and a diagnosed medical condition, she did not meet her burden of proof.

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 has not established that she sustained an injury in the performance of duty on June 4, 2013, as alleged.

⁹ *Walter D. Morehead*, 31 ECAB 188 (1986).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 7, 2014 and September 25, 2013 are affirmed.

Issued: August 13, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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