

physician and that, as a result thereof, he had a buildup of fluid in his legs which led to an infection.

FACTUAL HISTORY

On February 13, 2013 appellant, then a 59-year-old city letter carrier, filed a traumatic injury claim alleging injury to his neck, both shoulders, lower back and both legs as a result of his federal duties. In an attached statement, he stated that he arrived to work at 8:00 a.m. on February 13, 2013 and was sitting in his chair with his feet elevated because of a prior job injury and had to twist his body all the way to the right to take notes. Appellant noted that, after he was at work about two and a half hours, he twisted and felt pain and pinching on his right side and a popping sound in his lower back. When getting out of his chair, he felt an increase in pain and pinching in his neck and shoulders. The employing establishment controverted appellant's claim in a letter dated March 2, 2013. It noted that he was previously on the periodic rolls under OWCP File No. xxxxxx291 until he returned to work on February 11, 2013 to a sedentary limited-duty job.

By letter dated March 12, 2013, OWCP noted that appellant's claim was first accepted for a limited amount of medical expenses and was administratively approved, but that it had now been reopened. It informed him that certain items were necessary before his claim could be approved, including medical evidence establishing a causal relationship between the diagnosed condition and the alleged employment event.

In a March 19, 2013 medical report of an initial orthopedic examination, Dr. Samy F. Bishai, a physician Board-certified in emergency medicine, diagnosed appellant with cervical strain; cervical disc syndrome, herniated cervical discs at C3-4, C4-5 and C5-6; bilateral radiculopathy upper extremities; lumbosacral strain, lumbar disc syndrome; herniated disc at L5-S1; facet hypertrophic changes from L3 to S1 levels bilaterally, worse at L3-4 and L4-5; internal derangement of the right knee joint; internal derangement of the left knee joint; contusion; and sprain of the lower extremities particularly in the legs, ankles and feet. He noted that at 8:00 a.m. on February 13, 2013, while appellant was working, he had to twist his body all the way to the right, to work and that, after two and a half hours, he twisted and felt pain, pinching and a popping sound in his low back. Dr. Bishai opined that appellant has suffered an aggravation of the preexisting condition due to twisting his back. He stated that appellant was not in a position to return to any type of work but was forced to return to work due to the opinion of the second physician in appellant's other case, an opinion that was contrary to that of Dr. Bishai, who stated that appellant "could not possibly tolerate this type of work." Dr. Bishai concluded, "My opinion was based on several examinations of this patient's conditions and review of all diagnostic studies that I have done on this patient. He contended that it is unfortunate that a second opinion examination of a few minutes would cause an opinion that was hastily made and the result is continued suffering of this patient and continued problems with his condition.

By decision dated April 24, 2013, OWCP denied appellant's claim as it found that the medical evidence did not demonstrate that the claimed medical condition was related to the established employment-related event.

On May 1, 2013 appellant requested an oral hearing before an OWCP hearing representative.

In a May 8, 2013 report, Dr. Bishai opined that appellant could not do any work, even sedentary work.

At the hearing held on November 6, 2013, appellant testified that his prior claim was filed due to injuries he sustained while slipping and falling getting into his postal vehicle on February 6, 2012, and that OWCP had accepted this claim. He noted that he was contacted by the employing establishment on January 9, 2013 to return to work. Appellant testified that, upon his return to work, the promised accommodations were not in place and he had to sit sideways at his desk so that he could elevate his legs and that he could not elevate both of his legs at the same time. He noted that, on the date of the incident, he felt pain in his legs and they became swollen, he was not able to see his kneecaps and he was in pain. Appellant noted that he saw a doctor who determined that he had an infection in his leg and that he had an operation after which he was in the hospital for three weeks. His representative argued that the fluid build-up inside of appellant's leg was because he was not able to properly elevate it, he was not accommodated properly as the employing establishment promised him and that the fluid and swelling caused the bacteria which required him to have surgery. The representative noted that appellant got the infection two days after his return to work.

In a December 3, 2013 report, Dr. Bishai reiterated his prior diagnoses. He then indicated that appellant had a severe setback to his condition because he suffered an infection that occurred in his legs after he was pressured to return to work against his advice. Dr. Bishai reported that appellant's supervisor made appellant return to work against his will and against his doctor's opinion, that as a result he suffered an injury shortly after returning to work and only a few hours later developed an infection. He stated that the connection and causal relationship between appellant's development of his serious problem with his legs and his return to work is very obvious. Dr. Bishai indicated that this constituted a rationalized medical opinion to explain how appellant's injury occurred after his return to work resulting in this disastrous result with a severe infection, surgery and appellant's misery for several months. He declared appellant totally and permanently disabled and stated that he should never be forced go to any type of work in the future based on the desires of his supervisors or the managers of the employing establishment and to do so will only lead to further disastrous consequences.

In a decision dated January 28, 2014, an OWCP hearing representative affirmed the April 24, 2013 OWCP 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.² 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.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 In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The medical evidence required to 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.⁷

ANALYSIS

OWCP denied appellant's claim as he had not established that there was a causal relationship between the accepted employment incident and his medically diagnosed conditions. In his claim form, appellant alleged that he suffered injuries to his neck, shoulders, low back and both legs as a result of his federal duties. Dr. Bishai listed appellant's diagnoses as cervical strain; cervical disc syndrome, herniated cervical discs at C3-4, C4-5 and C5-6; bilateral radiculopathy upper extremities; lumbosacral strain, lumbar disc syndrome; herniated disc at L5-S1; facet hypertrophic changes from L3 to S1 levels bilaterally, worse at L3-4 and L4-5; internal derangement of the right knee joint; internal derangement of the left knee joint; contusion; and sprain of the lower extremities particularly in the legs, ankles and feet. In his

² *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

³ 20 C.F.R. § 10.5(e).

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

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁷ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

March 19, 2013 report, he expressed his dismay that appellant returned to work against his orders and opined that appellant had an aggravation of his preexisting condition due to the twisting of his back at his federal employment. Dr. Bishai did not specifically indicate which conditions were aggravated and the mechanism of how appellant's employment duties specifically aggravated that specific medical condition. In a May 8, 2013 report, he opined that appellant was unable to work but did not provide a rationalized opinion on causal relationship. Then, at the hearing, appellant contended that he suffered an infection in his leg. The representative argued that the fluid build-up inside appellant's leg occurred because he was unable to elevate his leg properly while working. Although appellant mentioned in his claim form that he experienced significant swelling in his leg, the first extensive discussion of the infection occurred at the hearing. In a December 3, 2013 report, Dr. Bishai reiterated his prior diagnoses and stated that, because appellant was forced to go back to work, he developed an infection and that the connection and causal relationship between this and his return to work was "obvious."

The Board finds that the opinion of Dr. Bishai is not sufficiently well rationalized to meet appellant's burden of proof. Dr. Bishai did not mention any infection until his December 3, 2013 report and noted at that time that appellant had never had an infection in his legs before. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.⁸ Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.⁹ Without any explanation or rationale for the conclusion reached, Dr. Bishai's opinion is insufficient to establish that appellant's medical conditions are causally related to the employment incident of February 13, 2013.¹⁰

CONCLUSION

The Board finds that appellant did not establish an injury on February 13, 2013.

⁸ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

⁹ *R.W.*, Docket No. 12-375 (issued October 28, 2013).

¹⁰ *See Deborah L. Beatty*, 54 ECAB 334 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 28, 2014 is affirmed.

Issued: August 20, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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