

**United States Department of Labor
Employees' Compensation Appeals Board**

W.J., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Iron Mountain, MI, Employer**

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**Docket No. 13-1440
Issued: January 23, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 4, 2013 appellant filed a timely appeal from a May 7, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish an injury in the performance of duty on December 20, 2012.

On appeal, appellant contests the denial of his claim and contends that he was in good shape with no neck, shoulder or arm pain prior to the fall. He requested that his medical bills be covered.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 11, 2013 appellant, then a 57-year-old supervisory diagnostic radiologist, filed a traumatic injury claim alleging that on December 20, 2012 he slipped under a parked car and bruised his right thumb, elbow and shoulder. He did not stop work. The employing establishment noted that it was initially a no lost time or medical expense claim. In an incident report, the employing establishment noted that on December 20, 2012 at approximately 4:32 p.m. appellant was walking in the parking lot on his way to his car when he slipped and fell, landing on his right arm/thumb. Appellant was able to continue home but noted soreness of the right lower arm and thumb.

Appellant submitted a January 16, 2013 report of emergency treatment wherein a nurse practitioner indicated that appellant sustained a back strain. A magnetic resonance imaging (MRI) scan of the lumbar spine obtained on February 8, 2013 was read by Dr. Marc J. Miller, a Board-certified diagnostic radiologist, as showing moderate degenerative arthritic change with no abnormal motion on flexion or extension. The MRI scan of the cervical spine was interpreted by Dr. Miller as showing degenerative arthritic change, no subluxation on flexion or extension. In a report from the Neuroscience Group dated February 18, 2013, a nurse practitioner diagnosed pain of the cervical spine with radicular pain on the right.

In an April 24, 2013 report, Dr. Philip A. Yazbak, a Board-certified neurosurgeon, noted that appellant was seen in his office by his nurse practitioner on February 14, 2013. He subsequently saw appellant on March 18, 2013. Appellant reported that his injury had occurred on December 20, 2012 and that his complaints had to do with neck right scapular and radiating right arm pain. Dr. Yazbak diagnosed right upper extremity radiculopathy due to preexistent spondylosis, brought on by the injury of December 20, 2012. He noted that appellant was placed on oral steroids and referred for physical therapy with the possibility of cervical traction. Dr. Yazbak noted that, as of his March 18, 2013 visit, things had improved and it was recommended that appellant continue with neck exercises, start home cervical traction and continue anti-inflammatories.

In a decision dated May 7, 2013, OWCP denied appellant's claim. It accepted the December 20, 2012 incident at work but found that the medical evidence failed to establish a cervical or right upper extremity related to the fall that date.

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 the 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

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

In order to determine whether an employee sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components, which must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident or exposure, which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴

The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical evidence 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.⁵

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury on December 20, 2012. The medical evidence of record is insufficient to support his claim.

OWCP accepted that appellant experienced the employment incident of December 20, 2012, when he slipped and fell. It denied appellant's claim finding that he failed to submit sufficient medical evidence to establish that his cervical or right upper extremity condition was causally related to the accepted employment incident. Appellant submitted an emergency treatment note dated January 13, 2013 and a medical report by the Neuroscience Group. Neither document is considered as probative medical evidence as they were signed by a nurse practitioner. As a nurse practitioner is not a "physician" as defined under FECA. The reports do not constitute probative medical evidence countersigned by a physician.⁶

Dr. Miller interpreted appellant's MRI scans, but he did not offer any opinion as to the causal relationship between appellant's diagnosed moderate degenerative arthritic changes and the employment incident of December 20, 2012. The April 24, 2013 report of Dr. Yazbak is also insufficient to establish appellant's claim. He noted that appellant reported that his injury occurred on December 20, 2012, but provided no explanation of the mechanism of the injury.⁷ He did not provide a description of how the incident occurred or that it happened during appellant's work. There is no other medical evidence in the record to support that appellant sustained a cervical or right upper extremity condition causally related to the accepted employment incident. As appellant failed to submit medical evidence to establish a causal

³ See *Elaine Pendleton*, 40 ECAB 1143 (1989); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁴ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁵ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁶ See 5 U.S.C. § 8101(2); A.A., Docket No. 13-1425 (issued September 25, 2013).

⁷ See *J.R.*, Docket No. 13-575 (issued August 20, 2013).

relationship between his federal employment and a diagnosed medical condition, OWCP properly denied his claim.

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 his belief that the condition was caused by his employment is sufficient to establish causal relationship.⁸

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 meet his burden of proof to establish that he sustained an injury in the performance of duty on December 20, 2012, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 7, 2013 is affirmed.

Issued: January 23, 2014
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

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

⁸ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).