

injury occurred when a 68-pound parcel fell on her left hand and arm from atop a six-foot cage. The employing establishment checked a box indicating that appellant was injured in the performance of duty.

Appellant submitted a form report dated March 6, 2012, signed by a physician's assistant.

Appellant also submitted physical therapy notes, signed by physical therapists, dating from March 28 through May 4, 2012. These notes contained a signed referral from Dr. Surekha Bandlamuri, a Board-certified internist, noting her diagnosis of cervicgia and recommending physical therapy three times per week for four weeks.

In a report dated April 17, 2012, Dr. Bandlamuri diagnosed appellant with cervicgia, unspecified backache, and pain in the joint of the shoulder region. On examination, she noted that appellant's left shoulder had no pain and that she was not experiencing muscle weakness, swelling, bruising, tingling or numbness.

On May 17, 2012 Dr. Bandlamuri repeated her prior diagnoses and stated that appellant's injury occurred in February due to a fall. She stated that appellant's left arm and neck did not bother her anymore and that her neck had normal range of motion. Dr. Bandlamuri noted that appellant was still experiencing headaches and cervicgia and referred her for further physical therapy for the latter condition.

By letter dated July 26, 2012, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It afforded her 30 days to submit additional evidence and to respond to its inquiries, noting that "pain" is not a valid diagnosis supportive of a claim for compensation, and that she had not submitted rationalized medical opinion evidence to establish that she had been diagnosed with a condition resulting from the incident of February 13, 2012. Appellant did not respond.

By decision dated October 4, 2012, OWCP denied appellant's claim. However, it accepted that appellant had filed a timely claim, that the incident occurred, that a medical condition had been diagnosed, and that she was within the performance of duty at the time of the incident. OWCP found that she did not submit rationalized medical opinion evidence to establish that the diagnosed condition of cervicgia was causally related to the February 13, 2012 incident.

On October 28, 2012 appellant requested an oral hearing before an OWCP hearing representative.

In an undated statement, appellant alleged that she had not received the development letter of July 26, 2012 and noted that she had spoken to several OWCP employees in an attempt to contact the claims examiner who wrote the October 4, 2012 decision.

In a report dated October 25, 2012, Dr. Bandlamuri diagnosed appellant with reflux esophagitis, cervicgia and pain in the joint of the shoulder region. She noted that appellant's neck and shoulder pain had resolved and that appellant requested that Dr. Bandlamuri complete paperwork in support of her claim.

By letter dated November 2, 2012, Dr. Bandlamuri reviewed appellant's history of diagnosis and treatment, stating that appellant's pain of the neck and left shoulder occurred due to an injury at work on February 13, 2012 when she attempted to block a 68-pound box from falling on her with her left hand. She noted that, on March 2, 2012, she had reviewed the results of x-rays of the cervical spine and left shoulder taken on February 14, 2012, which revealed abnormal straightening of the spine and minor degenerative changes, but no evidence of trauma. Dr. Bandlamuri stated that appellant had full range of motion of her left shoulder on this date with no pain and tenderness in the left upper back. She stated that appellant returned on March 6, 2012, with left full range of motion discomfort and muscle tightness, and again on April 17, 2012 with left upper back tenderness and no pain with full range of motion of the left shoulder. On October 15, 2012 appellant noted that her left shoulder and back pain had improved. On October 23, 2012 she stated that she had heavy shooting pain of the right arm, as well as tightening of the left lateral neck, but Dr. Bandlamuri found that she was asymptomatic at the time of examination. Dr. Bandlamuri told appellant that her neck pain was due to spasm and tightening of her sternocleidomastoid muscle and advised her to use heat and Ibuprofen.

In a statement dated October 28, 2012, appellant described the effects of her injury and her actions in the immediate aftermath of the traumatic incident of February 13, 2012. She noted that her arm, neck, head, and upper back began to hurt only after her shift ended, but that she had notified her supervisor several hours after it occurred. Appellant stated that she did not sustain any injury to herself between February 13, 2012 and the date she first saw her physician, February 14, 2012.

In a record of an oral hearing held on February 14, 2013, the hearing representative expressed her opinion that OWCP had incorrectly accepted that the evidence established the medical component of fact of injury. She stated that appellant had submitted only a diagnosis of cervicgia from her physician, which meant neck pain, and that because pain was not an acceptable diagnosis, appellant had not established a diagnosed medical condition. Appellant noted that she had not received the development letter of July 26, 2012, and that she had not known that her claim had a \$1,500.00 payment limit without formal adjudication. She stated that she thought her physician and therapist had been sending OWCP appropriate information. Appellant had retired from the employing establishment in the last few weeks. The hearing representative noted that even with an acceptable diagnosis, appellant would still need to submit a report from a physician explaining how her diagnosis was causally related to the employment incident, and that Dr. Bandlamuri's May 17, 2012 statement contradicted the history of injury given by claimant because it stated that her injury resulted from a fall. An agency representative attended the hearing, but did not testify.

By report dated February 26, 2013, Dr. Bandlamuri noted that appellant's symptoms were consistent with her statement of what had occurred at work. She repeated her diagnoses of cervicgia, unspecified backache, left shoulder pain, unspecified musculoskeletal disorders and symptoms referable to the neck and spasm of muscle. Dr. Bandlamuri stated that appellant had sustained her injury as a result of an incident at work.

In a statement dated March 13, 2013, appellant noted that Dr. Bandlamuri's May 17, 2012 report was in error and that Dr. Bandlamuri had told appellant that she meant to write that a package had fallen on appellant. She stated that she had not been previously informed of the

\$1,500.00 limit to medical expenses and that the employing establishment had told her that OWCP should be paying her bills if her physician was still treating her. Appellant noted that she had not claimed disability and that she had attempted to keep her costs low.

On March 14, 2013 the employing establishment sent a letter to OWCP noting that it was challenging appellant's claim because she had not established that her diagnosis was causally related to the traumatic event of February 13, 2012.

By decision dated April 22, 2013, the hearing representative found that OWCP had mistakenly accepted that appellant had been diagnosed with a condition in its October 4, 2012 decision, and affirmed OWCP's earlier denial of compensation as modified. She noted that appellant had not submitted any medical evidence with a diagnosis other than "pain," and that findings of pain do not satisfy the medical aspect of the fact of injury determination.

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

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).

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

ANALYSIS

On February 21, 2012 appellant filed a claim alleging that she sustained left arm and upper back injuries due to an incident at work on February 13, 2012. She noted that her injury occurred when a 68-pound parcel fell on her left hand and arm from atop a six-foot cage. By decision dated April 22, 2013, an OWCP hearing representative denied appellant's claim, finding that she had not established a diagnosed condition due to the accepted incident.

The Board finds that appellant did not meet her burden of proof to establish her claim for a February 13, 2012 work-related injury because she did not submit sufficient medical evidence to establish a firm medical diagnosis due to the accepted incident. Appellant submitted reports from Dr. Bandlamuri. In a report dated February 26, 2013, Dr. Bandlamuri diagnosed appellant with cervicalgia, unspecified backache, left shoulder pain, unspecified musculoskeletal disorders and symptoms referable to the neck and spasm of muscle. She stated that appellant had sustained her injury as a result of an incident at work. These assessments were consistent with Dr. Bandlamuri's prior reports.

The Board has held that pain and spasm are generally descriptions of symptoms and are not, in themselves, considered firm medical diagnoses.⁹ Dr. Bandlamuri's description of cervicalgia, unspecified backache, left shoulder pain, and muscle spasm are not sufficient to establish a firm medical diagnosis related to the accepted incident at work. On repeated examination, she was unable to find evidence of traumatic injury to appellant, and unable to offer a firm medical diagnosis regarding appellant's conditions. On March 2, 2012 Dr. Bandlamuri reviewed the results of x-rays of the cervical spine and left shoulder taken on February 14, 2012, which revealed no evidence of trauma. She stated that appellant had full range of motion of her left shoulder on this date with no pain and tenderness in the left upper back. In a report dated April 17, 2012, Dr. Bandlamuri noted that appellant's left shoulder had no pain and that she was not experiencing muscle weakness, swelling, bruising, tingling or numbness. In a report dated May 17, 2012, she stated that appellant's left arm and neck did not bother her anymore and that her neck had normal range of motion. Dr. Bandlamuri did not offer a firm medical diagnosis for appellant's condition, but instead offered only assessments of pain and spasm. Therefore, the Board finds the reports of Dr. Bandlamuri insufficient to establish appellant's claim.

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

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

⁹ *See B.P.*, Docket No. 12-1345 (issued November 13, 2012) (regarding pain); *C.F.*, Docket No. 08-1102 (issued October 10, 2008) (regarding pain); *J.S.*, Docket No. 07-881 (issued August 1, 2007) (regarding spasm).

Appellant submitted physical therapy notes dated from March 28 through May 4, 2012, along with a form report signed only by a physician's assistant dated March 6, 2012. Physical therapists and physician's assistants are not physicians as defined under FECA. Therefore, their medical reports do not qualify as probative medical evidence supportive of a claim for federal workers' compensation.¹⁰ As the submitted physical therapy notes and form report were not countersigned by a physician, they are not probative medical evidence.

The Board finds that appellant did not submit sufficient medical evidence providing a firm diagnosis or a rationalized explanation as to how the accepted incident physiologically caused a neck and left arm condition. Appellant therefore failed to establish that she had a left arm and upper back condition resulting from the February 13, 2012 employment incident.

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 her burden of proof to establish that she sustained a left arm and upper back injury on February 13, 2012 in the performance of duty.

¹⁰ See 5 U.S.C. § 8101(2); *Vickey C. Randall*, 51 ECAB 357, 360 n.4 (2000) (regarding physical therapists); *Lyle E. Dayberry*, 49 ECAB 369, 372 (1998) (regarding physicians' assistants).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated April 22, 2013 is affirmed.

Issued: March 14, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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