



2013 while in the performance of duty. He described injury to the left side of his head, neck, right lower back, right arm and right shoulder. By letter dated January 16, 2013, OWCP advised appellant that additional factual and medical evidence was required to establish the claim for compensation.

Appellant submitted a hospital emergency room report dated January 3, 2013 from Dr. Paul Taglienti, Board-certified in emergency medicine, who listed a history of a “motor vehicle accident” and stated that the diagnosed conditions were right arm weakness and brachial plexus injury. The record contains diagnostic testing performed on January 3, 2013, which included magnetic resonance imaging (MRI) scan of the brachial plexus and cervical spine, x-rays of the lumbar back, right shoulder and pelvis and computerized tomography of the brain and cervical spine. The cervical MRI scan report noted degenerative changes and mild central spinal stenosis at C5-6 and the brachial plexus MRI scan reported no injury.

In a narrative statement, appellant described the motor vehicle accident of January 3, 2013, noting that he swerved to avoid another vehicle and struck a metal guard rail. He also submitted a police accident report.

In a report dated January 22, 2013, Dr. Ali Guy, a Board-certified physiatrist, provided a history that on January 3, 2013 appellant tried to avoid a car and struck a rail. Appellant complained of neck, low back, right shoulder and arm pain. Dr. Guy advised that appellant was not working and provided results on examination. He diagnosed multiple traumatic injuries, rule out cervical/lumbar disc bulge versus herniation, rule out cervical/lumbar radiculopathy, traumatic myofascial pain syndrome, internal derangement on the right shoulder, rule out rotator cuff tear, rule out right upper extremity brachial plexopathy.

By decision dated February 26, 2013, OWCP denied the claim for compensation. It accepted the January 3, 2013 incident, but found that the medical evidence was insufficient to establish causal relationship.

On May 31, 2013 appellant requested reconsideration of the claim. He submitted a March 19, 2013 report from Dr. Guy, who noted that diagnostic testing included MRI scans dated March 7, 2013 of the right shoulder and cervical spine and an electromyogram (EMG) dated March 19, 2013 of the upper extremities. Dr. Guy diagnosed C3-7 disc herniations, right shoulder full rotator cuff tear and a tear of the anterior and superior labrum, right shoulder severe adhesive capsulitis, acute traumatic bilateral C5-7 cervical radiculopathy, rule out lumbar disc bulge versus herniation, lumbar radiculopathy (clinical) and traumatic myofascial pain syndrome. He stated, “Based upon the history obtained, the clinical examination findings, results of the MRI [scans] and EMG studies, which were performed by me and which were reviewed by me, it is my professional opinion that [appellant] has sustained a permanent injury as a result of the automobile accident of January 3, 2013.” Dr. Guy stated that appellant remained totally disabled. He noted that appellant had a prior right shoulder partial rotator cuff tears of 2004, but it went from a partial tear to a full complete tear necessitating surgery.

By decision dated October 21, 2013, OWCP denied modification of the February 26, 2013 decision. It found that the medical evidence of record was insufficient to establish an injury causally related to the accepted motor vehicle accident.

## LEGAL PRECEDENT

FECA provides for the payment of compensation for “the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”<sup>2</sup> The phrase “sustained while in the performance of duty” in FECA is regarded as the equivalent of the commonly found requisite in workers’ compensation law of “arising out of an in the course of employment.”<sup>3</sup> An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.<sup>4</sup> 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 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.<sup>5</sup>

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by a medically sound explanation of the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.<sup>6</sup>

## ANALYSIS

In the present case, OWCP accepted that appellant was involved in a motor vehicle accident while in the performance of duty on January 3, 2013. Although appellant received treatment at a hospital emergency room on that date, this does not itself establish an injury in the performance of duty.<sup>7</sup> There must be sufficient medical evidence to establish a causal relationship between a specific diagnosed condition and the employment incident. As noted, the physician must have an accurate factual and medical background, provide a diagnosis and a sound explanation as to the relationship between the diagnosed condition and the employment incident.

The medical evidence of record does not meet appellant’s burden of proof. The emergency room report contains only a brief reference to a motor vehicle accident, with no physical examination results. The diagnosis indicated was a right arm weakness and a brachial plexus injury. Dr. Taglienti did not provide any opinion on causal relationship. The Board notes

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<sup>2</sup> 5 U.S.C. § 8102(a).

<sup>3</sup> *Valerie C. Boward*, 50 ECAB 126 (1998).

<sup>4</sup> *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

<sup>5</sup> *See John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>6</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

<sup>7</sup> *See, e.g., C.P.*, Docket No. 13-831 (issued July 12, 2013); *V.P.*, Docket No. 13-484 (issued May 9, 2013).

that the MRI scan evidence of record reported no brachial plexus injury. The emergency room evidence is not sufficient to establish an injury causally related to the January 3, 2013 accident.

Appellant submitted reports dated January 22 and March 31, 2013 from Dr. Guy. The January 22, 2013 report contains a history of the January 3, 2013 incident, but no opinion on causal relationship. The diagnoses listed include a general “multiple traumatic injuries,” which is not a specific diagnosed condition, a number of “rule out” possible diagnoses and a right shoulder internal derangement and traumatic myofascial pain syndrome. Dr. Guy did not provide an opinion as to the causal relationship of the specific diagnosed conditions to the employment incident. The Board finds that the January 22, 2013 is not of sufficient probative value to meet appellant’s burden of proof.

The March 31, 2013 report from Dr. Guy refers to additional diagnostic testing on March 7 and 19, 2013 and provided a new set of diagnoses: C3-7 disc herniations, right shoulder full rotator cuff tear and a tear of the anterior and superior labrum, right shoulder severe adhesive capsulitis, acute traumatic bilateral C5-7 cervical radiculopathy, rule out lumbar disc bulge versus herniation, lumbar radiculopathy (clinical) and traumatic myofascial pain syndrome. On the issue of causal relationship, he provided only a brief statement that appellant sustained “a permanent injury” as a result of the January 3, 2013 accident, based on his review of the evidence. This opinion is of limited probative value without further explanation as to the reasons for Dr. Guy’s stated conclusions. Dr. Guy provided several diagnosed conditions, including cervical herniations and radiculopathy, right shoulder conditions, a lumbar radiculopathy and myofascial pain syndrome. It is not clear which of these conditions constituted the “permanent injury” related to the employment incident. The March 31, 2013 report notes that appellant previously had partial rotator cuff tears in 2004 but Dr. Guy did not adequately address the preexisting shoulder condition or explain how the current diagnosed condition was related to the accepted employment incident.<sup>8</sup>

The Board finds that the medical evidence of record is not sufficient to meet appellant’s burden of proof. The medical evidence does not contain a report with a complete medical history or sound explanation of how the January 3, 2013 motor vehicle accident caused or aggravated a specific diagnosed condition or conditions.

On appeal, appellant contends that the evidence is sufficient to establish injury. For the reasons noted, the Board finds that he did not meet his 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 did not establish an injury in the performance of duty on January 3, 2013.

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<sup>8</sup> See *supra* note 6 at Chapter 2.805.3(e) (January 2013) (if there is a preexisting condition in the same part of the body, the physician must provide a medical opinion that differentiates between the effects of the work-related injury and the preexisting condition).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 21, 2013 is affirmed.

Issued: May 19, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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