

explained that the leg system of the tent kicked out, hitting his feet and causing him to fall to the ground.

In a June 5, 2013 report, Dr. Todd J. Twiss, Board-certified in orthopedic surgery, stated that he treated appellant for right shoulder pain on March 27, 2013, at which time appellant related that he sustained an injury at work in June 2012 while taking down an army tent. He stated that the injury occurred when appellant fell onto an outstretched hand and landed on his shoulder. Appellant's shoulder improved slightly after the incident occurred; however, the pain had recently returned. Dr. Twiss stated that appellant was not in any significant distress on physical examination and showed active range of motion in his shoulder. He stated that appellant had four out of five supraspinatus strength, four out of five external rotator strength, five out of five internal rotators and biceps strength. Dr. Twiss advised that appellant had pain with Speed's testing and O'Brien's testing, with no overt evidence of instability. He obtained x-ray testing, which showed mild anterolateral acromial prominence and normal acromioclavicular joint and normal glenohumeral joint. Dr. Twiss diagnosed a right shoulder rotator cuff tear and recommended conservative treatment in the form of physical therapy and activity modifications. He scheduled appellant for a magnetic resonance imaging (MRI) scan of his right shoulder on May 9, 2013. It showed myxoid degeneration of the rotator cuff and intrasubstance tear in the supraspinatus tendon, partial undersurface tear in the infraspinatus tendon and tenosynovitis of the long head of the biceps tendon.

In a report dated June 10, 2013, received by OWCP on October 15, 2013, Dr. Twiss stated that appellant had called him to correct the date of his work accident from June 2012 to June 2011.

On August 6, 2013 OWCP received a supplemental statement from appellant who described the incident by noting that the frame of the tent swung out, knocking him off his feet. Appellant tried to catch his fall and landed on his right shoulder.

By letter dated September 16, 2013, OWCP informed appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It stated that, when his claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work and payment of a limited amount of medical expenses was administratively approved. The merits of the claim had not been formally adjudicated. OWCP asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition and an opinion as to whether his claimed condition was causally related to his federal employment. It requested that appellant submit the additional evidence within 30 days.

In a statement dated September 21, 2013, received by OWCP on October 15, 2013, appellant stated that he did not seek medical treatment for his June 27, 2011 work injury until Dr. Twiss' March 27, 2013 examination. He delayed seeking medical treatment because he believed that his injury was nothing more serious than a muscle strain, pull or bruising. When appellant realized his injury was more serious, he consulted Dr. Twiss, who diagnosed a torn rotator cuff as shown by the May 9, 2013 MRI scan. He submitted statements from coworkers who witnessed the June 27, 2011 incident.

By decision dated October 17, 2013, OWCP denied appellant's claim, finding that he failed to establish fact of injury. It found that he failed to establish that he experienced the alleged June 27, 2011 employment incident at the time, place and in the manner alleged.

By letter dated October 28, 2013, appellant requested reconsideration.

By decision dated January 31, 2014, OWCP modified the October 17, 2013 decision, finding that appellant established the June 27, 2011 incident. It denied the claim, however, finding that he failed to submit sufficient medical evidence to establish that he injured his right shoulder in the performance of duty on June 27, 2011.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing that 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.³ 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.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. 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.⁵ 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.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

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁷ *Id.*

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

OWCP accepted that appellant fell while disassembling a tent on June 27, 2011. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.¹⁰ The Board finds that appellant has not submitted sufficient medical evidence to establish that the June 27, 2011 employment incident caused or contributed to his right shoulder condition.

Dr. Twiss submitted several reports in which he noted appellant's complaints of right shoulder pain on examination and found that he sustained a torn right rotator cuff, intrasubstance tear in the supraspinatus tendon, partial undersurface tear in the infraspinatus tendon and tenosynovitis of the long head of the biceps tendon to the right shoulder on June 27, 2011. These reports, however, did not sufficiently address the diagnosed condition related to the June 27, 2011 incident at work. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹¹ Dr. Twiss stated in his June 5, 2013 report that appellant's right shoulder injury occurred in June 2012 while taking down an army tent. Appellant fell onto an outstretched hand and landed on his right shoulder. Dr. Twiss stated that appellant was not in any significant distress on physical examination and had active range of motion in his shoulder, with mostly normal strength and no overt evidence of instability. He advised that x-rays of the right shoulder revealed mild anterolateral acromial prominence and normal acromioclavicular joint and normal glenohumeral joint; a right shoulder MRI scan showed a torn right rotator cuff, intrasubstance tear in the supraspinatus tendon, partial undersurface tear in the infraspinatus tendon and tenosynovitis of the long head of the biceps tendon.

Although Dr. Twiss presented a diagnosis of appellant's condition, he did not adequately address how these conditions causally related to the June 27, 2011 work incident. The actual mechanism of injury is not medically described. Dr. Twiss listed an erroneous date of injury as "June 2012 corrected to an unspecified date in June 2011." He did not address how, almost two

⁸ See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

¹⁰ *Carlone*, *supra* note 5.

¹¹ See *Anna C. Leanza*, 48 ECAB 115 (1996).

years after the incident, he was able to determine how the fall caused the shoulder injury. Dr. Twiss did not explain how any actual work activity on June 27, 2011 caused the torn rotator cuff, torn supraspinatus in infraspinatus tendons and tenosynovitis. Furthermore, he did not explain why appellant did not require medical treatment of his diagnosed shoulder conditions until March 2013.

The Board notes that the other reports of record, which were not prepared by physicians, did not explain how medically appellant would have sustained a right shoulder injury while disassembling a tent on June 27, 2011.¹²

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit sufficient medical opinion which describes or explains the process through which the June 27, 2011 work accident caused his right shoulder injury, with supporting medical rationale. Accordingly, he did not establish that he sustained a right shoulder injury in the performance of duty.

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 failed to establish that he sustained a right shoulder injury in the performance of duty on June 27, 2011.

¹² The Board notes that appellant has submitted several reports from physical therapists. These reports do not constitute medical evidence under section 8101(2). Healthcare providers such as nurses, acupuncturists, physician assistants and physical therapists are not considered physicians under FECA, their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability or causal relationship. 5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerré R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2014 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 9, 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