

FACTUAL HISTORY

On June 24, 2014 appellant, then a 30-year-old program support assistant, filed a traumatic injury claim alleging that on June 17, 2014 he pinched a nerve or pulled muscles in his neck, shoulders, and spine resulting in numbness in both legs. He related that his “office chair and walker locked into one another due to lack of space in [the] office” and he fell from his chair onto the floor. Appellant stopped work on June 17, 2014.

In an emergency room report dated June 17, 2014, Dr. Mircea Muresanu, Board-certified in emergency medicine, evaluated appellant for back and bilateral knee pain after his walker “got stuck on [an] office chair” and he fell forward. He provided a past medical history of using a walker for “slipped lumbar discs.” Dr. Muresanu noted that x-rays of the knees and lumbar spine showed no fractures. He diagnosed a fall with knee and back pain.

In a progress report dated June 18, 2014, Dr. Alex Racco, an osteopath, obtained a history of appellant experiencing neck pain and tingling in the lower extremities after he fell forward at work onto his knees when he slipped between his chair and walker. He diagnosed lumbar radiculopathy and cervical radiculitis. Dr. Racco instructed appellant to follow up with a workers’ compensation physician.

A July 1, 2014 magnetic resonance imaging (MRI) scan study of the lumbar spine showed disc bulges at L1-2 through L4-5 and a disc herniation at L5-S1 with “curvature of the lumbar spine with convexity to the left.” A July 1, 2014 MRI scan study of the cervical spine revealed disc bulges at C2-3 through C6-7 which were “more prominent than on the prior exam[ination],” a new left paracentral disc herniation at C5-6, and foraminal narrowing at C2-3 through C4-5 as a result of uncinat process hypertrophy.

In a report dated July 8, 2014, Dr. Racco related that he was treating appellant after a fall at work. He noted that an orthopedist found that he was unable to work.

By letter dated July 11, 2014, OWCP requested that appellant submit additional factual and medical information, including a detailed report from a physician addressing the causal relationship between a diagnosed condition and the work incident.

On July 22, 2014 appellant related on June 17, 2014 that he injured his neck, back, spine, and shoulders and experienced leg and feet numbness after he fell forward hitting the ground with his knees. He stated, “On that morning, I went to move my chair and the wheel of the chair got tangled with the one of my walker and I went flying one way and the chair the other.” Appellant received treatment at the emergency room after the fall.

On July 31, 2014 Dr. Racco indicated that he evaluated appellant on June 18, 2014 after he fell at work. He advised that diagnostic studies showed a herniated cervical disc.

In a report dated July 31, 2014, Dr. Todd Schlifstein, an osteopath, discussed appellant’s complaints of pain in the posterior, paraspinal area of the neck, numbness and tingling of both arms, and lumbar spine. He noted that he experienced a work accident on June 17, 2014. Dr. Schlifstein diagnosed primary cervical disc displacement, primary low back syndrome, back

strain, radicular symptoms of the upper and lower extremities, and lumbar disc displacement. He noted that appellant was “[o]ut of work.”

On August 5, 2014 appellant’s counsel asserted that he was injured in the course of his employment duties and noted that after he fell he was taken to the emergency room at the hospital where he worked.

By decision dated August 21, 2014, OWCP denied appellant’s claim as the evidence was insufficient to show that he sustained a diagnosed condition as a result of the June 17, 2014 employment incident. It further determined that the medical evidence did not address the causal relationship between any diagnosed condition and the identified work incident. OWCP further noted that appellant’s attending physicians did not address why he needed a walker or the effect of the incident on his preexisting condition.

On September 5, 2014 Dr. Schlifstein advised that he was treating appellant for low back syndrome, cervical disc displacement, and chondromalacia of the patella. He opined that he was totally disabled from July 31 to December 30, 2014.

In a report dated September 15, 2014, Dr. Schlifstein related that he evaluated appellant on July 31, 2014 for a June 17, 2014 work accident. He discussed his symptoms of “neck pain at the back of his neck and down his arms after a fall at work on June 17, 2014. [Appellant] has numbness and tingling in his left and right arms. [He] has low back pain with some numbness and tingling from the same accident.” Dr. Schlifstein reviewed the findings of herniated discs at C5-6 and L5-S1 on MRI scan studies. He noted that appellant was waiting for approval from workers’ compensation for electrodiagnostic studies. Dr. Schlifstein stated, “[Appellant] has no previous history of neck and back pain prior to the accident. [His] injuries and conditions mentioned above are causally related to [the] employment accident caused on June 17, 2014. At the current time, [appellant] is at a level of total disability.”

On October 3, 2014 appellant, through counsel, requested reconsideration. He asserted that the September 15, 2014 report from Dr. Schlifstein was sufficient to establish that appellant sustained an injury in the course of his federal employment.

In progress reports dated November 11, 2014 and March 31, 2015, Dr. Schlifstein diagnosed cervical disc displacement, low back syndrome, back strain, radiculopathy of the upper and lower extremities, and lumbar disc displacement. He provided examination findings and recommended treatment. Dr. Schlifstein noted that appellant was out of work.

By decision dated April 6, 2015, OWCP denied modification of its August 21, 2014 decision. It found that Dr. Schlifstein did not provide any rationale for his opinion that the June 17, 2014 employment incident resulted in the diagnosed conditions.

On appeal appellant’s counsel asserts that the September 15, 2014 report from Dr. Schlifstein is sufficient to establish that he sustained an injury in the performance of duty.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish 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 filed within the applicable time limitation; that an injury was sustained while 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 on a traumatic injury or an occupational disease.⁴

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁶ An employee may establish that the employment incident occurred as alleged, but fail to show that his disability and/or condition relates to the employment incident.⁷

ANALYSIS

Appellant alleged that he injured his spine, neck, and shoulders on June 17, 2014 when he fell to the floor after his office chair and walker locked together. He established that the June 17, 2014 incident occurred. The issue is whether the medical evidence establishes that appellant sustained an injury as a result of this incident.

The Board finds that appellant has not established that the June 17, 2014 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.⁸

In an emergency room report dated June 17, 2014, Dr. Muresanu obtained a history of bilateral knee and back pain when he fell forward after his walker got stuck on an office chair. He noted that he used a walker due to slipped discs in the lumbar spine. Dr. Muresanu diagnosed knee and back pain after a fall. He did not provide a firm diagnosis of appellant’s condition or

² 5 U.S.C. § 8101 *et seq.*

³ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁴ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ *Id.*

⁸ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

fully explain how the described work incident resulted in knee and back pain. Without a firm diagnosis supported by medical rationale, the report is of little probative value.⁹

On June 18, 2014 Dr. Racco discussed appellant's history of pain in his neck and tingling in his lower extremity after he fell at work and landed on his knees. He diagnosed lumbar radiculopathy and cervical radiculitis. On July 8, 2014 Dr. Racco related that he was treating appellant after he fell at work and advised that an orthopedist found that he was unable to work. On July 31, 2014 he indicated that diagnostic studies revealed a herniated cervical disc. Dr. Racco did not directly attribute the diagnosed conditions to the fall at work on June 17, 2014 and thus his opinion is of diminished probative value.¹⁰

On September 5, 2014 Dr. Schlifstein diagnosed low back syndrome, cervical disc displacement causing chronic pain, and chondromalacia of the patella and found that appellant was disabled from June 31 to December 30, 2014. On November 11, 2014 and March 31, 2015 he diagnosed cervical disc displacement, low back syndrome, back strain, radiculopathy of the upper and lower extremities, and lumbar disc displacement. Dr. Schlifstein did not address the cause of the diagnosed conditions. Consequently, his reports are of little probative value.¹¹

In a report dated September 15, 2014, Dr. Schlifstein advised that he began treating appellant on July 31, 2014 for complaints of neck pain radiating into his arms and low back pain after a June 17, 2014 fall while at work. He reviewed the cervical and lumbar MRI scan findings of herniated discs at C5-6 and L5-S1. Dr. Schlifstein found that the diagnosed conditions were due to the June 17, 2014 employment injury, noting that appellant did not have any prior history of pain in his neck or back. He advised that appellant was totally disabled but did not provide any rationale for his opinion. Medical conclusions unsupported by rationale are of diminished probative value.¹² Additionally, Dr. Schlifstein found that appellant had no prior history of neck or back pain, which conflicts with the past medical history obtained in the emergency room on June 17, 2014 of needing a walker for slipped lumbar discs. Medical opinions based on an incomplete or inaccurate history are of diminished probative value.¹³

On appeal appellant's counsel asserts that the September 15, 2014 report from Dr. Schlifstein is sufficient to meet his burden of proof. As discussed, however, Dr. Schlifstein did not base his opinion on a complete and accurate medical history or support his causation finding with medical rationale and thus it is of diminished probative value.¹⁴

⁹ See *Samuel Senkow*, 50 ECAB 370 (1999) (finding that, because a physician's opinion of Legionnaires disease was not definite and was unsupported by medical rationale, it was insufficient to establish causal relationship).

¹⁰ See *J.D.*, Docket No. 14-2061 (issued February 27, 2015); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹¹ *Id.*

¹² See *V.M.*, Docket No. 15-601 (issued May 19, 2015); *Willa M. Frazier*, 55 ECAB 379 (2004); *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

¹³ See *M.W.*, 57 ECAB 710 (2006).

¹⁴ See *Franklin D. Haislah*, 52 ECAB 457 (2001); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on June 17, 2014 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 6, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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