

FACTUAL HISTORY

On May 21, 2013 appellant then a 45-year-old mission support technician, filed a Form CA-1, traumatic injury claim alleging that on April 10, 2013, he was struck by the handle of a malfunctioning plate tamper and injured his upper left thigh. The field manager, Rem Hawes, noted on the Form CA-1 that appellant was injured in the performance of duty. Appellant did not stop work.

In an October 23, 2013 telephone memorandum, appellant inquired about the status of his claim and noted that he had surgery.

By letter dated October 23, 2013, OWCP advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that his claim was administratively handled to allow medical payments up to \$1,500.00; however, the merits of the claim had not been formally adjudicated. OWCP advised that, because appellant requested authorization for surgery, his claim would be formally adjudicated. It requested that he submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed upper left thigh injury.

Appellant submitted a statement dated November 6, 2013 and noted that on April 10, 2013 he was injured while operating a walk-behind trencher. He noted pushing up on the throttle and pulling down to level the machine when he was struck in the thigh and groin area by the handle. Appellant reported that his condition had not improved and that he had increasing pain in his neck, shoulder, and upper back and may require another arthroscopy for his groin injury.

Appellant was treated by Dr. Kashif Alvi, a Board-certified urologist, from April 11, 2011 to February 16, 2013 for left testicle pain and infertility. On April 11, 2011 he underwent testicular imaging which revealed a large caliber left-sided varicoceles, prominent cysts at the head of the left epididymis and prominent tubular ectasia of the left testicle. Dr. Alvi noted that appellant had undergone a vasectomy and later reversal of the vasectomy in the 1990's.

Appellant was treated by Dr. Sheldon Marks, a Board-certified urologist, who on August 16, 2013 performed a bilateral multilayer microdot microsurgical vasovasostomy for pain, excision of scarred vas, and clips. Dr. Marks diagnosed postvasectomy pain syndrome, significant, chronic, refractory to conservative therapy, dense scarring, bilateral metals clips, and right vasal fluid under pressure. On November 7, 2013 he noted that appellant underwent an intrascrotal exploration and redo microsurgical vasectomy reversal for treatment of persistent, refractory inguinal and genital pain which appellant reported began following trauma to his groin. Dr. Marks noted significant, extensive intrascrotal scarring and inflammation along and around the spermatic cord and around the testicle, which seemed much more than that normally found for this type of surgery. He opined that the extensive scarring could have been from bleeding and trauma as described by appellant. Appellant submitted a job description for a materials handler.

The employing establishment submitted a statement from Patrick Putnam, the associate district manager, who noted that on April 10 2013 appellant was operating a walk-behind trencher which malfunctioned and struck him in the upper thigh/groin area. Mr. Putnam noted that appellant did not mention the injury immediately but when he did he was instructed to file a claim. He concurred that the incident took place on the job.

In a December 13, 2013 decision, OWCP accepted that the evidence established that the incident occurred as alleged but denied the claim as appellant had failed to submit medical evidence containing a diagnosis causally related to the April 10, 2013 incident.

On January 13, 2014 appellant requested an oral hearing which was held on September 2, 2014. He submitted emergency room notes from May 15, 2013 where he was treated by Dr. Meera Chopra, an osteopath, for a soft tissue injury to left hip and inguinal area. Appellant reported an onset of symptoms three days prior when he hit his left hip on a truck at work. He also reported left anterior hip pain since he was hit by the handle of a paver at work. Appellant related that his problem was job related. Findings upon physical examination revealed the skin over the left hip and iliac crest was intact without visible abrasion or laceration, there was no active bleeding and the neurovascular examination was intact. Dr. Chopra diagnosed left thigh injury after appellant was hit by a handle of a paver at work. He noted May 15, 2013 x-rays of the hip and pelvis revealed no radiographic evidence of an acute fracture.³

In an addendum dated October 24, 2013, a physician assistant indicated that appellant contacted the office and asserted that his leg injury was related to an allergic reaction to onions at Taco Bell. The physician assistant noted reviewing the chart and advised that appellant had not previously reported an allergic reaction to the physician or nurses.

Appellant submitted discharge instructions from a physician assistant dated August 24, 2013 who diagnosed testicular masses. Also submitted was an information sheet on the condition of rhabdomyolysis.

In a decision dated November 7, 2014, an OWCP hearing representative affirmed the December 13, 2013 decision, as modified. She denied that the claimed work event on April 10, 2013 occurred as alleged. The hearing representative noted that appellant had waited over 30 days to file his compensation claim and to seek medical attention for the claimed work injury. She was inconsistent with the severity of the injury claimed.

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 filed within the applicable time limitation 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 is causally related to the

³ A March 15, 2013 x-ray reports for the pelvis and the left hip accompanied the emergency room documents. No acute findings were noted on the pelvis x-ray and a radiologically intact hip was noted on the left hip.

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.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.⁵

An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁶ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁷

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.⁸

ANALYSIS

OWCP denied appellant's claim as the claimed incident, being struck by the handle of a malfunctioning plate tamper on April 10, 2013, did not occur as alleged. The Board finds to the contrary that the April 10, 2013 incident with the plate tamper did occur as alleged by appellant. On the Form CA-1 and in a narrative statement appellant described his duties. The employing establishment did not dispute the accuracy of appellant's description of the work incident. The field manager, Mr. Hawes, noted on the Form CA-1 that appellant was injured in the performance of duty. Similarly, a statement from Mr. Putnam, the associate district manager, noted that on April 10, 2013 appellant was operating a walk behind trencher which

⁴ Gary J. Watling, 52 ECAB 357 (2001).

⁵ T.H., 59 ECAB 388 (2008).

⁶ R.T., Docket No. 08-408 (issued December 16, 2008); Gregory J. Reser, 57 ECAB 277 (2005).

⁷ Betty J. Smith, 54 ECAB 174 (2002).

⁸ I.J., 59 ECAB 408 (2008); Victor J. Woodhams, 41 ECAB 345 (1989).

malfunctioned and struck him in the upper thigh/groin area. He concurred that the incident took place on the job. The hearing representative found that the incident did not occur because appellant had waited more than 30 days to file the claim and that he had other injuries in the same part of the body.

The mere fact that appellant had prior medical problems affecting the same part of the body is not evidence that he did not have a new separate work injury to the same area.⁹ While appellant did not immediately file the claim, this is not the only criteria to be considered in determining whether a claimant has established that the incident occurred. Here, two managers agreed that the claimed incident occurred. In view of this evidence, the Board finds that appellant established that the April 10, 2013 employment incident occurred as alleged.

The Board finds, however, that the medical evidence is insufficient to establish that his diagnosed condition was caused or aggravated by this incident. On October 23, 2013 OWCP advised appellant of the type of medical evidence needed to establish his claim. However, appellant did not submit medical evidence to establish that any of these conditions are causally related to his incident.

Appellant was treated by Dr. Marks on August 16, 2013 who performed a bilateral microsurgical vasovasostomy and diagnosed postvasectomy pain syndrome, with dense scarring, bilateral metal clips and right vasal fluid under pressure. On November 7, 2013 Dr. Marks noted that appellant underwent an intrascrotal exploration and microsurgical vasectomy reversal for treatment of persistent, inguinal, and genital pain. Appellant reported that this pain began following trauma to his groin. He noted significant, extensive intrascrotal scarring and inflammation around the spermatic cord and testicle, and opined that the extensive scarring could have been from bleeding and trauma as described by appellant. The Board notes that this report provides some support for causal relationship but is insufficient to establish that the claimed left thigh and groin injury was causally related to his employment duties. In his report, Dr. Marks opined only that extensive scarring “could have” been caused by trauma described by appellant. This report provides only speculative support for causal relationship because of the qualifier that appellant’s employment “could have” caused his condition. Dr. Marks provided no medical reasoning to support his opinion on causal relationship. Therefore, this report is insufficient to meet appellant’s burden of proof.¹⁰

Appellant was treated by Dr. Chopra on May 15, 2013 for a soft tissue injury to left hip and inguinal area. Dr. Chopra reported an onset of symptoms three days prior when appellant hit his left hip on a truck at work. He noted x-rays of the pelvis and hip were negative. Dr. Chopra diagnosed left thigh injury and anterior hip pain occurring after appellant was hit by a handle of a paver at work. He also noted that appellant had sustained another recent injury to his hip when he hit a bumper at work. Dr. Chopra’s report attributed appellant’s condition, at least in part, to

⁹ See *Thomas J. O'Donnell*, 3 ECAB 179, 183 (1950) (it matters not what the state or condition of the health of the employee might be; if the conditions of employment constitute the precipitating cause of disability, such disability is compensable as having resulted from accidental injury arising out of the employment).

¹⁰ Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

an unrelated incident when appellant hit his hip on the bumper of his automobile. He failed to provide a rationalized opinion regarding the causal relationship between appellant's left thigh and hip injury and the factors of employment.¹¹ Therefore, this report is of limited probative value and insufficient to meet appellant's burden of proof.

Appellant submitted reports from Dr. Alvi dated April 11, 2011 to February 16, 2013 who diagnosed large caliber left-sided varicoceles, prominent cysts at the head of the left epididymis and prominent tubular ectasia of the left testicle. However, these reports are not persuasive because they predate the time of the claimed incident of April 10, 2013.

Appellant submitted discharge instructions from a physician assistant dated August 24, 2013 and an addendum note dated October 24, 2013. However, the Board has held that treatment notes signed by a physician assistant are not considered medical evidence as this provider is not a physician under FECA.¹²

The remainder of the medical evidence, including diagnostic test reports, fail to provide an opinion on the causal relationship between appellant's job and his diagnosed left thigh, hip, and groin injury. For this reason, this evidence is not sufficient to meet appellant's burden of proof.¹³

On appeal appellant asserted that OWCP had improperly denied his claim and believed he submitted sufficient evidence to establish that on April 10, 2013 he sustained a left thigh and groin injury. For the reasons explained, the medical evidence does not establish that his diagnosed conditions are causally related to his employment.

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 his claimed conditions were causally related to his employment.

¹¹ See *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹² See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

¹³ *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2014 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: July 23, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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