

**United States Department of Labor
Employees' Compensation Appeals Board**

W.P., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Safford, AZ, Employer**

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**Docket No. 15-276
Issued: March 23, 2015**

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 19, 2014 appellant, through counsel, filed a timely appeal from an August 5, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish a medical condition in the performance of his federal duties.

FACTUAL HISTORY

On September 19, 2013 appellant, then a 48-year-old materials handler supervisor, filed a traumatic injury claim alleging that he was injured on September 18, 2013 at 12:45 p.m. when the commercial washer overflowed out of drain pit and flooded the floor. He slipped while

¹ 5 U.S.C. § 8101 *et seq.*

unplugging the drain. Most of appellant's weight was supported on the right side of his body, causing injury, and he injured his right wrist, right shoulder, and his lower back.

Appellant submitted a September 24, 2013 report of injury which noted the history of injury as slip and fall while kneeling down to unplug drain injuring his right shoulder, right wrist, and lower back. He also submitted the following: a September 24, 2013 medical history form; a February 26, 2013 magnetic resonance imaging (MRI) scan of the right wrist;² a September 23, 2013 CA-16 form authorizing treatment by Dr. Andrew Mark Braunstein, an orthopedic surgeon specializing in hand surgery; and a request for authorization to repair/revise wrist joint.

In a September 24, 2013 report, Dr. Braunstein indicated that appellant was a new patient who presented to the office with complaints of right shoulder and wrist pain after a slip and fall at work on September 18, 2013. He noted that appellant had a previous history of right wrist and shoulder pain and had been seen by other physicians. Appellant advised that a February 2013 MRI scan of his right wrist and right shoulder revealed a ligament injury to his wrist and a labral injury to his shoulder. He stated that physical therapy had improved his symptoms, but they worsened after his recent fall at work. Dr. Braunstein presented examination findings of the upper extremities and right wrist. He noted that the x-ray of the right shoulder showed no signs of fracture, dislocation, or abnormality. An assessment of right subacromial impingement, possible labral pathology, and right wrist pain were provided. Appellant received a cortisone injection in the right subacromial space.

In a November 6, 2013 letter, OWCP advised appellant of the deficiencies in his claim and requested additional factual and medical evidence. Also, in a letter dated November 6, 2013, it denied authorization for any medical treatment/testing as it was currently under development.

In an October 21, 2013 report, Dr. Braunstein noted the history of the September 18, 2013 slip and fall and that appellant had brought the MRI scan of his right wrist for review. Appellant's shoulder pain had improved greatly since the subacromial injection, but he still had concerns about his right wrist. Dr. Braunstein diagnosed resolving right subacromial impingement and scaphalunate (SL) ligament dissociation with dorsal intercalated segment instability (DISI). Surgery for the right wrist was discussed.

By decision dated December 13, 2013, OWCP denied the claim because the medical evidence failed to establish that the diagnosed conditions were caused or aggravated by the work injury and as appellant had failed to provide treatment information regarding the preexisting write condition.

On May 6, 2014 appellant, through counsel, requested reconsideration and submitted new medical evidence. In a March 19, 2014 report, Dr. Caryl Brailsford-Gorman, an orthopedic surgeon also in practice with Dr. Braunstein, noted that appellant reported a twisting injury. "[Appellant] had his keys in a heavy prison door and he was moving quickly to the left and twisted his back. He had immediate onset of pain and was seen at the medical clinic at the prison that day." Dr. Brailsford-Gorman noted that appellant was seen December 9, 2013 and that he

² The MRI scan revealed dorsal chip fractures of the lunate and triquetrum and chronic post-traumatic changes of the triquetrum and hamate.

had delayed seeking further treatment in hopes that it would go away. She noted that he had a service-connected injury at T12-14 due to a burst fracture. Dr. Brailsford-Gorman also noted that appellant had obtained an MRI scan from the Veterans Administration Medical Center which showed diffuse disc degenerative changes with no herniated discs or stenosis. She opined that appellant had a lumbar sprain/strain.

In a June 24, 2014 report, Dr. Braunstein noted the history of right shoulder and wrist pain began after he slipped and fell at work on September 18, 2013. Appellant noted improvement following his injection on October 21, 2013 but that his pain had returned. Dr. Braunstein recommended another injection, further physical therapy, and an MRI scan of the shoulder.

By decision dated August 5, 2014, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee who claims 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; 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

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.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. 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.⁶

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the specified employment factors or incident. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale

³ C.S., Docket No. 08-1585 (issued March 3, 2009).

⁴ S.P., 59 ECAB 184 (2007).

⁵ Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

⁶ See Shirley A. Temple, 48 ECAB 404, 407 (1997); John J. Carlone 41 ECAB 354, 356-57 (1989).

explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁷

ANALYSIS

OWCP accepted that the employment incident of September 18, 2013 occurred at the time, place, and in the manner alleged. Appellant alleged that on September 18, 2013 he slipped and fell while attempting to unplug drain when a commercial washer overflowed. The employing establishment issued a CA-16 and authorized treatment from Dr. Braunstein for alleged injuries to the right shoulder, right wrist, and lower back.⁸ The issue is whether appellant sustained any injury in connection to the accepted employment incident. The Board finds that appellant did not meet his burden of proof to establish that this incident caused an injury.

In reports dated September 24 and October 21, 2013, and June 24, 2014, Dr. Braunstein noted complaints of right shoulder and wrist pain after the slip and fall at work on September 18, 2013. He also noted that appellant had preexisting conditions to his right wrist and right shoulder. While Dr. Braunstein diagnosed right shoulder subacromial impingement and SL dissociation with DISI deformity and opined that surgery was needed for the right wrist, he did not provide any opinion as to whether appellant's conditions were caused or aggravated by the work injury. 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.⁹

The March 19, 2014 report from Dr. Brailsford-Gorman described a different injury: "appellant had his keys in a heavy prison door and he was moving quickly to the left and twisted his back." There is also no mention of any specific injury date or right wrist and right shoulder conditions/injuries. As noted, the question for determination is whether the established work activity caused an injury. As Dr. Brailsford-Gorman's report is based on different employment factors than those described by appellant and accepted by OWCP as occurring on September 18, 2013, it is of no probative value.¹⁰

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, his argument is not substantiated.

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

⁸ The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. *See D.M.*, Docket No. 13-535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300, 10.304. Although OWCP denied appellant's claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, OWCP should further address this issue.

⁹ *A.D.*, 58 ECAB 149 (2006).

¹⁰ *See E.J.*, Docket No. 09-1481 (issued February 19, 2010). 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.

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 not met his burden of proof to establish a medical condition as a result of the established September 18, 2013 work incident.

ORDER

IT IS HEREBY ORDERED THAT the August 5, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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