

claim (Form CA-1) alleging that he sustained injuries in a motor vehicle accident (MVA) on January 3, 2013. He described an injury to the left side of his head, neck, right lower back, right arm, and right shoulder. OWCP accepted that appellant was involved in a motor vehicle accident in the performance of duty on January 3, 2013.

Regarding appellant's burden to establish that he sustained an injury as a result of this incident, the Board found there was no rationalized medical opinion on causal relationship between a diagnosed condition and the employment incident. An attending physician, Dr. Ali Guy, a Board-certified physiatrist, had opined in a March 31, 2013 report that appellant had sustained a permanent injury as a result of the motor vehicle accident. The Board noted that Dr. Guy had provided several diagnoses, including C3-7 disc herniations, right shoulder rotator cuff tear and a tear of the superior and anterior labrum (SLAP), right shoulder adhesive capsulitis, and acute traumatic C5-7 cervical radiculopathy. Dr. Guy did not, however, clearly explain an opinion on the issue of causation. It was not clear which diagnoses constituted the "permanent injury" nor did Dr. Guy address a preexisting shoulder condition.

On July 8, 2014 appellant, through his representative, requested reconsideration. He submitted a May 24, 2014 report from Dr. Kenneth McCulloch, an orthopedic surgeon, who provided a history of injury and indicated that appellant was first seen on March 18, 2013. Dr. McCulloch provided results on examination and stated that a March 8, 2013 MRI scan demonstrated a full thickness tear of the supraspinatus and infraspinatus tendons. According to him, appellant underwent right shoulder arthroscopic subacromial decompression/SLAP debridement, labral and rotator cuff debridement on September 12, 2013. Dr. McCulloch stated that appellant had a complete retracted rotator cuff tear, and was status postsurgery. He opined that based on his review of the evidence, radiographic and intraoperative findings, appellant had sustained a right shoulder injury as a result of the January 3, 2013 MVA. Dr. McCulloch noted that appellant had a prior surgery to the rotator cuff, but prior to the January 3, 2013 employment incident appellant had satisfactory function of the right shoulder. After the accident, appellant had limitations on range of motion, and loss of muscle strength. Dr. McCulloch stated the rotator cuff tear appellant sustained as a result of the MVA was so large it could not completely be repaired and appellant would continue to require physical therapy.

By decision dated September 12, 2014, OWCP reviewed the case on its merits and denied modification. It stated that the record did not contain the March 8, 2013 MRI scan or the September 12, 2013 surgery report.

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."³ 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 and in the course of employment."⁴ An employee seeking benefits under FECA has the burden of establishing that

³ 5 U.S.C. § 8102(a).

⁴ *Valerie C. Boward*, 50 ECAB 126 (1998).

he or she sustained an injury while in the performance of duty.⁵ 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.⁶

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background of reasonable medical certainty and supported by medical rationale explaining 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.⁷

ANALYSIS

In the prior decision, the Board reviewed the medical evidence of record as of October 21, 2013 and found that the record did not contain a rationalized medical opinion on the issue presented. Dr. Guy, for example, did not provide a sufficient medical history or clearly explain how a diagnosed condition was causally related to the January 3, 2013 MVA.

On reconsideration, appellant submitted a new medical report from Dr. McCulloch dated May 24, 2014. The Board has reviewed this report and finds it is sufficient to require further development. Dr. McCulloch indicated that he initially examined appellant on March 18, 2013. He has opined that appellant sustained a rotator cuff tear from the January 3, 2013 MVA, based on his review of the evidence and the diagnostic and operative findings. Dr. McCulloch also discussed appellant’s medical history with respect to the right shoulder, noting a prior rotator cuff surgery.

The Board finds that the Dr. McCulloch has provided an uncontroverted medical opinion, based on a complete background, supporting causal relationship between a right shoulder rotator cuff tear and the January 3, 2013 motor vehicle accident. The evidence is sufficient to require OWCP to further develop the medical evidence on the issue of causal relationship.⁸ While appellant has the burden of proof to establish the claim, OWCP shares responsibility in the development of the evidence to see that justice is done.⁹ On remand it should further develop the medical evidence as necessary and secure any necessary diagnostic or operative reports. After such further development as OWCP deems appropriate, OWCP should issue a proper decision with respect to appellant’s claim.

⁵ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁶ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁸ *See John J. Carlone*, *supra* note 6.

⁹ *A.V.*, Docket No. 14-748 (issued October 3, 2014); *William J. Cantrell*, 34 ECAB 1223 (1983).

CONCLUSION

The Board finds the case not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 12, 2014 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: March 23, 2015
Washington, DC

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

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

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