



## ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury causally related to the accepted March 31, 2014 employment incident.

On appeal counsel contends that appellant's claim could be classified as a series of traumatic injury claims, an occupational disease claim, or as a consequential injury from the initial claim for post-traumatic stress disorder. She contends that submission of an incorrect form is only a technical error and it was improper to deny appellant's case due to an improper form. Counsel contends that the medical evidence established appellant's claim. In the alternative, she contends that appellant should have been referred for a second opinion.

## FACTUAL HISTORY

On April 10, 2014 appellant, then a 49-year-old claims examiner, filed a traumatic injury claim (Form CA-1) alleging that on March 31, 2014 "something pulled" while she was ascending stairs to the third floor of her office building, using the handrail. She alleged injury to her "knees, neck, shoulder, arm across my chest, upper and lower back."<sup>3</sup>

Appellant submitted numerous medical reports which predate the March 31, 2014 employment incident. These reports included multiple reports by Dr. Gregory H. Smith, a physician Board-certified in anesthesiology and pain medicine. Dr. Smith's reports noted continuing treatment for chronic neck and upper extremity pain. He interpreted a May 29, 2003 magnetic resonance imaging (MRI) scan as evincing cervicgia and cervical spondylosis.

At the request of Dr. Smith, a new MRI scan was performed on April 21, 2008, which was interpreted as revealing small, full thickness tear involving the far anterior fibers of the distal supraspinatus tendon, moderate intra-articular biceps tendinopathy, slightly prominent amount of fluid within the subcoracoid bursa, and mild acromioclavicular joint osteoarthritis. Appellant also received ongoing treatment from Dr. Jessica N. Smith, a Board-certified family practitioner. In a December 11, 2013 report, Dr. Jessica Smith listed appellant with numerous active problems including: adnexal cyst, sigmoid diverticulosis, angiolioma of kidney, post-traumatic stress disorder, insomnia, degenerative joint disease of the knee, monoclonal gammopathy of unknown significance, rheumatoid factor positive, adult-onset Still's disease, enthesopathy of the ankle and taurus, tendon contracted, reactive airway disease, partial Achilles tendon tear, Achilles tendinitis, bone spur, panic attack, anxiety, and carpal tunnel syndrome. In a March 26, 2014 report, Dr. Crystel D. Knierim, a Board-certified orthopedic surgeon, indicated that appellant was under her care, that appellant was being treated for bilateral knee degenerative joint disease and would need to undergo a knee replacement. She noted that appellant was limited in her ability to walk and stand due to her diagnosis, and should park as close as possible to the building due to her knee condition.

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<sup>3</sup> The record reflects that OWCP has accepted that appellant sustained post-traumatic stress disorder and panic disorder without agoraphobia as a result of being trapped in an elevator on July 6, 2010. The record also reflects that appellant has filed previous claims dating back to November 27, 2001.

Appellant also submitted medical evidence pertaining to treatment following the employment incident of March 31, 2014. On April 1, 2014 Dr. Jessica Smith noted pain in appellant's chest, neck, back, and abdomen. She referred appellant to a physiatrist.

In an April 2, 2014 progress note, Dr. Maria McFarland, a podiatrist, noted that appellant complained of localized foot pain for three weeks. She noted that appellant denied a history of injury, but reported the pain started after having to walk the stairs at work. Dr. McFarland noted that an imaging showed degenerative joint disease of the dorsal midfoot. She assessed appellant with foot pain, pressure ulcer of toe, hammer toe, osteoarthritis of the foot, and ganglion cyst.

In an April 3, 2014 note, Dr. Eman Gibril Spaulding, a physician with the DePaul Emergency Department, noted that appellant was seen in the emergency department on April 3, 2014 and that due to medical reasons appellant may not return to work until April 14, 2014 to give her time to rest and be further evaluated by her orthopedic surgeon.

Appellant also submitted notes from her licensed, clinical psychologist, Dr. Yitzchok M. Abramson, dated April 1 and 4, 2014, wherein he discussed her treatment for post-traumatic stress disorder, which was related to an incident in 2010 when the elevator she was taking to her duty station at work broke and she was trapped inside. Dr. Abramson noted that appellant was now fearful of elevators and therefore took the stairs. He opined that she was not capable of returning to work as she was far too anxious to be productive. Dr. Abramson also noted that appellant indicated that her accommodations had not been met.

In an April 8, 2014 report, Dr. Gregory Smith listed his impressions as recent exacerbation of neck pain after walking up and down stairs, nonspecific and nonradicular low back pain, global muscular deconditioning, and morbid obesity. He planned to obtain new x-rays and an MRI scan, and gave appellant a prescription for physical therapy twice a week for six weeks. In an order of the same date, Dr. Smith prescribed physical therapy.

Appellant saw Dr. Steven W. Baak, an internist Board-certified in rheumatology, on April 11, 2014 and he listed diagnoses of rheumatoid arthritis, bilateral knee pain, degenerative joint disease of the knee, and positive rheumatoid factor. Dr. Baak noted that she may have to undergo surgery soon, and that his initial optimism for injection therapy and medication for rheumatoid arthritis was tempered by the reality of end stage arthritis changes on x-rays.

In a May 1, 2014 note, Dr. Rolando Larice, a Board-certified psychiatrist, stated that appellant had been under his care since April 14, 2014 and that due to her physical and emotional health issues she was unable to continue "in school" at this time. In a June 13, 2014 note, he released her to the care of Dr. J. Todd Dean, a psychiatrist, effective June 25, 2014. In a July 1, 2014 note, Dr. Dean indicated that he spoke with appellant today for the first time in several months. He opined that at this time it appeared highly unlikely that she could return to work in the foreseeable future.

By letter dated August 26, 2014, OWCP informed appellant that further information was necessary for approval of her claim, including medical evidence as to how her employment injury resulted in a diagnosed condition. Appellant was afforded 30 days to submit this evidence.

In a September 16, 2014 report, Dr. Gregory Smith indicated that he saw appellant on April 8, 2014. He noted that her questionnaire of even date indicated that her neck pain occurred on March 31, 2014 while walking upstairs at work. However, Dr. Smith indicated that appellant's symptoms has been noted earlier on March 10, 2014, and dated back to prior treatments in 2008. He noted that her complaints presented at the April 8, 2014 visit consisted of neck pain radiating to both shoulders and left posterior arm and nonradicular low back pain. Dr. Smith stated that, as to causation, he felt it was reasonable to cite a temporary aggravation of a preexisting condition.

In a September 25, 2014 note, Dr. Knierim noted that appellant had been under her care for her knees for some time. She noted that appellant had an incident in 2010 after which she has been having trouble with her knees. Dr. Knierim indicated that appellant had an episode on March 31, 2014 that aggravated her knee condition and precipitated the need to proceed with knee replacements. She noted that appellant's working diagnosis was knee degenerative joint disease. Dr. Knierim noted that appellant underwent a left knee replacement on July 28, 2014 and was in the process of recovering from this replacement. She further noted that appellant needed a right knee replacement to help her regain full function. Dr. Knierim opined that the extent of appellant's disability required work restrictions.

In response to OWCP's questions, appellant indicated on September 26, 2014 that she was unable to use elevators due to her accepted work-related post-traumatic stress disorder. She noted that the employing establishment allowed her to work on the first floor for almost four years, but that they reassigned her in March 2014, and on March 31, 2014 she was injured while walking up stairs. Appellant further noted that she tried to pull herself up to the next flight of stairs, and pulled or pinched something in her chest, neck, and upper back down into her low back when trying to move out of the way of other people.

By decision dated December 23, 2014, OWCP denied appellant's claim as the medical evidence of record failed to establish that the claimed medical conditions were causally related to the accepted work incident.

On January 8, 2015 appellant, through counsel, requested a telephonic hearing, before an OWCP hearing representative. At the hearing held on July 20, 2015, she testified that in 2010, after returning to work after extensive leave, she was proceeding to her work-duty station when she was trapped in the elevator. Appellant noted that she now suffered from post-traumatic stress disorder. She described her resulting anxiety about elevators and noted that even seeing the work elevator caused a reaction. Appellant noted that, after this incident, she began using the stairs. She noted that when she first returned to work in April 2011 she was placed at a workstation on the first floor. Appellant testified that she was moved to a new building on March 10, 2014. She described difficulty in getting details on the position of her new assignment, and that when she reported to the job, she found out that the position was on the third floor. Appellant stated that she walked the stairs in pain, but her fear of the elevator was greater than the pain. She also noted that her new workstation was not ergonomically correct. Appellant testified that on March 31, 2014 she was walking up the stairs and there were people in the stairwell who were asking her if she wanted to go on the elevator as she was walking with a cane. She thought she was in their way so she tried to walk fast, so that she would not be a hinderance. Appellant noted that something just pushed and pinched around her whole back and

up to her neck area and she could barely make it out of the stairwell. She indicated that she saw her psychologist that date, who referred her to the emergency room.

By decision dated October 7, 2015, OWCP's hearing representative affirmed the December 23, 2014 decision. The hearing representative concluded that there was insufficient medical evidence of record to establish causal relationship between the accepted employment incident of March 31, 2014 and the diagnosed medical conditions.

### **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 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. 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.<sup>4</sup>

OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.<sup>5</sup> To determine whether an employee sustained a traumatic injury in the performance of duty, the first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>6</sup> In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.<sup>7</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>8</sup> 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,

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<sup>4</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>5</sup> 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>6</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

<sup>7</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

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.<sup>9</sup>

Under FECA, when employment factors cause an aggravation of an underlying condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>10</sup> When the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable.<sup>11</sup> For the conditions of employment to bring about an aggravation of preexisting disease, the employment must cause acceleration of the disease or precipitate disability. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for the period after the aggravation ceased.<sup>12</sup>

### ANALYSIS

Appellant has established that the claimed incident occurred as alleged, *i.e.*, that she was walking up stairs while pulling on handrails on March 31, 2014. However, OWCP denied her claim as it found that she failed to establish a causal relationship between the accepted employment incident of March 31, 2014 and any medical diagnoses.

The record contains medical evidence indicating that appellant suffered from a multitude of physical and emotional ailments preceding the March 31, 2014 employment incident. Dr. Jessica Smith, appellant's treating physician, noted numerous problems including post-traumatic stress disorder, degenerative joint disease of the knee, and Achilles tendinitis. Dr. Gregory Smith's reports indicate that he has been treating appellant since 2003 for cervicalgia and cervical spondylosis. Dr. Knierim treated appellant on March 26, 2014 for degenerative joint disease. Although an aggravation of a preexisting disease will be covered under FECA, appellant must show that the incident of employment accelerated the disease or precipitated disability.<sup>13</sup>

The Board finds that appellant has not submitted sufficient medical evidence establishing that she suffered a traumatic injury on March 31, 2014 while walking up the stairs to the third floor of her office building. Dr. Spaulding noted that he saw her in the emergency department on April 3, 2014 and that due to medical reasons she could not return to work until April 14, 2014 so that she could be evaluated by her orthopedic physician. The report contains no medical diagnoses or any statement on causation. Dr. McFarland assessed appellant with foot pain, pressure ulcer of toe, hammer toe, osteoarthritis of the foot, and ganglion cyst. She, however, did not address the cause of these conditions. Similarly, Dr. Baak noted that appellant suffers from rheumatoid arthritis, bilateral knee pain, and degenerative joint disease, but gave no opinion

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<sup>9</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>10</sup> *Raymond W. Behrens*, 50 ECAB 221 (1999).

<sup>11</sup> A.S., Docket No. 16-514 (issued June 25, 2015).

<sup>12</sup> *L.C.*, Docket No. 15-0436 (issued January 20, 2016).

<sup>13</sup> *Id.*

on causation. As the opinions of Drs. Spaulding, McFarland, and Baak do not provide an opinion on the cause of appellant's condition, these opinions are insufficient to establish causal relationship.<sup>14</sup>

Dr. Larice, in a May 1, 2014 note, indicated that appellant was unable to continue in "school" at this time. Dr. Dean wrote in his July 1, 2014 note that she was unable to work for the foreseeable future. Both Drs. Larice and Dean are psychiatrists and these opinions presumably address appellant's post-traumatic stress disorder. Similarly, appellant's clinical psychologist, Dr. Abramson, discussed her post-traumatic stress disorder. These physicians do not address the subject matter of the claim, *i.e.*, whether appellant established a physical injury as a result of climbing stairs on March 31, 2014. Therefore, these reports are not relevant to the current issue of causation and are of limited probative value regarding this claim.<sup>15</sup>

In his September 16, 2014 report, Dr. Gregory Smith noted that he saw appellant on April 8, 2014. He noted that she indicated on her questionnaire that her neck pain occurred while walking upstairs at work on March 31, 2014, but that she had earlier indicated that her symptoms occurred on March 10, 2014 and that treatment for this condition dated back to 2008. Dr. Smith also stated that, as to causation, he thought it was reasonable to cite a temporary aggravation of a preexisting condition. The fact that work activities produced pain or discomfort revelatory of an underlying condition does not raise an inference of an employment relationship.<sup>16</sup> Dr. Smith noted that appellant had similar symptoms in 2008 and again on March 2014. He provided no explanation as to why he thought that it would be reasonable to cite a temporary aggravation of a preexisting condition nor did he indicate the length of time for the aggravation. Furthermore, Dr. Smith's opinion is not expressed to a reasonable degree of medical certainty, but rather is speculative in nature, and therefore cannot establish a causal relationship.<sup>17</sup>

Dr. Knierim, in her September 25, 2014 note, stated that appellant had an episode on March 31, 2014 that aggravated the factors in her knee and precipitated the need to proceed with knee replacements. She never described the employment incident of March 31, 2014 nor explained how it aggravated appellant's degenerative joint disease in her knees. A mere conclusion without the necessary rationale explaining how and why Dr. Knierim believes that an incident resulted in a diagnosed condition is not sufficient to meet appellant's burden of proof.<sup>18</sup> Furthermore, in Dr. Knierim's March 26, 2014 report, written five days before the work incident, Dr. Knierim indicated that appellant was being treated for bilateral knee degenerative joint disease and would need to undergo a knee replacement. Therefore, her reports are insufficient to establish causal relationship.

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<sup>14</sup> *K.G.*, Docket No. 15-0894 (issued October 9, 2015).

<sup>15</sup> *See generally C.A.*, Docket No. 13-1364 (issued May 13, 2014).

<sup>16</sup> *N.T.*, Docket No. 14-390 (issued December 18, 2014).

<sup>17</sup> *See N.C.*, Docket No. 15-1900 (issued March 7, 2016).

<sup>18</sup> *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

The Board notes that counsel contends on appeal that this claim could have been filed as either as a series of traumatic injury claims, a claim for an aggravation of appellant's claim for post-traumatic stress disorder, or as a claim for an occupational disease. A recurrence of disability is defined as the inability to work caused by a spontaneous change in a medical condition which results from a previous injury or illness without an intervening injury or new exposure in the work environment that caused the illness.<sup>19</sup> As appellant returned to work and alleged an injury occurred while walking the stairs on March 31, 2014 her claim is properly considered as a claim for a new injury and not as a recurrence. Furthermore, a traumatic injury is an occurrence within a single workday rather than an occupational injury which occurs over a period longer than a single workday or shift.<sup>20</sup> Appellant alleged that her condition was causally related to a single incident on March 31, 2014. If she believes that her employment aggravated her condition over a period of days or shifts, than she should file a claim for an occupational disease.<sup>21</sup> Counsel also contends that it is obvious even to any reasonable lay person that climbing three flights of stairs five days a week for almost three weeks would aggravate her severe knee condition. However, the issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.<sup>22</sup>

An award of compensation may not be based on surmise, conjecture, or speculation.<sup>23</sup> As appellant did not establish that her medical condition was causally related to the accepted employment incident, she has not met her burden of proof.

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 her burden of proof to establish that she sustained an employment-related injury on March 31, 2014, as alleged.

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<sup>19</sup> See 20 C.F.R. § 10.5(x); *Donald T. Pippin*, 45 ECAB 631 (2003).

<sup>20</sup> *D.S.*, Docket No. 15-0606 (issued July 2, 2015).

<sup>21</sup> See *W.S.*, Docket No. 15-1271 (issued October 5, 2015).

<sup>22</sup> *W.W.*, Docket No. 15-1486 (issued November 18, 2015).

<sup>23</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 7, 2015 is affirmed.

Issued: August 24, 2016  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board