



## ISSUE

The issue is whether appellant has established an injury causally related to a November 6, 2013 employment incident.

## FACTUAL HISTORY

On November 12, 2013 appellant, then a 57-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on November 6, 2013 she sustained an injury while assisting a patient. She described the incident as transferring a patient from a wheelchair to a bed and feeling sudden neck and shoulder pain, with numbness radiating into the upper extremities. The reverse side of the claim form reported that appellant had been working light duty with a five-pound lifting restriction. Appellant stopped working as of November 7, 2013.

By letter dated November 19, 2013, OWCP requested that appellant submit additional evidence with respect to her claim for compensation. Appellant was afforded 30 days to submit this evidence. An employing establishment program manager submitted a letter dated November 20, 2013, asserting that she had been on light duty for several months prior to the claimed injury. The program manager indicated that appellant had been counseled regarding working within her restrictions and controverted the claim for compensation.

Appellant submitted a December 12, 2013 response describing the November 6, 2013 incident. She reported that the patient asked for help, and she held the wheelchair while the patient was transferring to the bed. Appellant related that she felt sudden pain in her neck, back, and shoulders, with radiating numbness into the upper extremities. She referenced her prior work injury on October 1, 2012, when she had slipped and fallen on her right side.

Appellant submitted a Form CA-17 duty status report from Dr. Marjet Cordon, a Board-certified internist, dated November 6, 2013. Dr. Cordon reported that appellant had injured her neck while pushing a heavy patient in a wheelchair and diagnosed neck pain.

In a narrative report dated November 23, 2013, Dr. Paul Brisson, a Board-certified orthopedic surgeon, provided a history that appellant sustained an injury to her cervical spine in a work-related accident on November 6, 2013. He reported that she had cervical pain, radiating to her lumbar spine and upper extremities, with numbness. Dr. Brisson provided results on examination and indicated that cervical x-rays taken that date showed C5-6 spondylosis with osteophyte formation. He opined that appellant had sustained an injury to her lumbar and cervical spine in a work-related incident on November 6, 2013. Dr. Brisson also submitted a Form CA-17 dated November 23, 2013, as well as a Form CA-20 attending physician's form report dated November 23, 2013. In the Form CA-20 report, he diagnosed cervical spondylosis and checked a box marked "yes" that the condition was employment related.

The record contains a magnetic resonance imaging (MRI) scan report dated November 27, 2013 from Dr. JoEllen Finkel, a radiologist. Dr. Finkel reported C5-6 and C6-7 disc bulges, with bilateral foraminal stenosis C5-6.

By decision dated December 24, 2013, OWCP denied the claim for compensation. It accepted that an employment incident occurred on November 6, 2013 as alleged, but found that the medical evidence of record was insufficient to establish the claim for compensation.

In a letter dated January 23, 2014, appellant, through counsel, requested a hearing before an OWCP hearing representative. She submitted a December 6, 2013 report from Dr. Kevin Wright, a Board-certified orthopedic surgeon, who provided a history that she had developed cervical pain and upper extremity numbness on November 6, 2013 while assisting a patient. Dr. Wright provided results on examination and diagnosed cervical radiculopathy.

Dr. Brisson submitted a December 16, 2013 report with a history that appellant had a work-related accident on November 6, 2013. He also noted that she had a previous October 1, 2012 injury when she had fallen and injured her right hand and elbow. Dr. Brisson indicated that he had reviewed MRI scan and x-ray results and wrote that appellant had “sustained an injury to her cervical spine when she was involved in a work-related accident on November 6, 2013. [Appellant] has a cervical disc herniation and spondylosis of C5-6.” He indicated that appellant needed physical therapy. Dr. Brisson provided the same assessment in a January 27, 2014 report.

In a February 6, 2014 report, Dr. Wright provided results on examination and diagnosed right carpal tunnel syndrome, right thumb sprain/strain, and right elbow medial epicondylitis. He completed a Form CA-17 report dated March 7, 2014, providing work restrictions. In a Form CA-20 report dated March 7, 2014, Dr. Wright diagnosed hand pain, carpal tunnel syndrome, and elbow enthesopathy. He checked a box marked “yes” that the conditions were employment related.

By report dated April 5, 2014, Dr. Brisson indicated that appellant could return to work with restrictions of no lifting, pushing, or pulling.

A hearing was held on July 8, 2014. By decision dated September 15, 2015, the hearing representative affirmed the December 24, 2013 OWCP decision, finding that the medical evidence of record was not of sufficient probative value to establish the claim.

On January 12, 2015 appellant, through counsel, requested reconsideration. She submitted a November 17, 2014 report from Dr. Brisson, who reported that she had initially been seen on November 23, 2013. Dr. Brisson noted that appellant was involved in a work-related incident on November 6, 2013 while employed as a nurse. He reported that, when he saw her on November 23, 2013, she complained of pain, right upper extremity numbness and tingling, and she was last seen on April 5, 2014.

By decision dated March 25, 2015, OWCP reviewed the merits of the claim. It denied modification, finding that the medical evidence of record was insufficient to establish the claim for compensation.

In a letter received on October 15, 2015, appellant, through counsel, again requested reconsideration. She submitted a January 23, 2015 report from Dr. Douglas Schwartz, an osteopath. Dr. Schwartz provided a history that appellant was assisting in the transfer of a patient from wheelchair to bed, and experienced an onset of pain in her neck, low back, and

shoulders, with bilateral radiating numbness. He reported that she currently complained of persistent neck and low back pain, with stiffness and numbness into the arms. Dr. Schwartz provided results on examination and diagnosed: cervical derangement with probable underlying radiculopathy with desiccation and loss of height C5-6 disc with a broad-based disc protrusion, eccentric to the left and a posterolateral osteophytic ridge and moderate high-grade bilateral foraminal stenosis C5-6, disc bulge C6-7, lumbosacral derangement with probable underlying radiculopathy and/or herniated disc, bilateral shoulder derangements with probable underlying rotator cuff tears and/or impingement, and bilateral carpal tunnel syndrome/median neuropathy. He recommended physical therapy and additional diagnostic testing. Dr. Schwartz opined, "It is my professional medical opinion, within a reasonable degree of medical certainty, that there is a causal relationship between the history of injury as described by the patient and the aforementioned diagnosis." He also wrote that he had "referenced" state workers' compensation medical guidelines.

By decision dated January 8, 2016, OWCP reviewed the case on its merits. It denied modification of the prior decisions, again finding that the medical evidence of record was insufficient to establish the claim for compensation. OWCP found that Dr. Schwartz did not provide a rationalized medical opinion.

### **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."<sup>3</sup> 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 an in the course of employment."<sup>4</sup> An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.<sup>5</sup> 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.<sup>6</sup>

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

---

<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Valerie C. Boward*, 50 ECAB 126 (1998).

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

<sup>6</sup> *See John J. Carlone*, 41 ECAB 354, 357 (1989).

manifested and the medical rationale expressed in support of the physician's opinion.<sup>7</sup> Medical rationale is a medically sound explanation for the opinion offered.<sup>8</sup>

### ANALYSIS

In the present case, OWCP accepted that on November 6, 2013 appellant was assisting a patient being transferred from a wheel chair to a bed. Appellant indicated that she felt pain in her neck and back, with radiating numbness and tingling to her upper extremities.

The issue presented is whether the medical evidence submitted is sufficient to establish the claim for compensation. As indicated above, the medical evidence must include a proper factual and medical history, with an opinion on causal relationship between a diagnosed condition and the November 6, 2013 incident. The opinion on causal relationship must be supported with sound medical rationale. In reviewing the medical evidence of record, the Board finds that there is no medical report that meets the above standard.

Dr. Cordon treated appellant on the date of injury, but provided only a Form CA-17 report that is of limited probative value. He offered a brief description of the employment incident, and diagnosed neck pain without providing a definitive diagnosis or an opinion on causal relationship.<sup>9</sup>

Dr. Brisson began treating appellant as of November 23, 2013, but his reports of record are also of diminished probative value to the issue presented. He writes that she had a work-related accident on November 6, 2013, without providing a more detailed description of the actual incident. In his November 23, 2013 report, Dr. Brisson diagnosed C5-6 spondylosis, and opines that appellant had an injury to her lumbar and cervical spine on November 6, 2013. He did not offer any explanation or medical rationale in support of his opinion. The Board has held that form reports checking a box marked "yes" to denote causal relationship, without more by way of medical rationale, are of little probative value.<sup>10</sup> In his December 16, 2013 report, Dr. Brisson included a diagnosis of cervical disc herniation, but again provided no medical rationale in support of causal relationship between the diagnosed conditions and the employment incident. The November 17, 2014 report repeats the assertion that appellant had a work-related accident, without providing additional explanation.<sup>11</sup>

The reports from Dr. Wright do not provide a rationalized medical opinion on causal relationship. He diagnosed right carpal tunnel syndrome, right thumb sprain/strain, and right

---

<sup>7</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

<sup>8</sup> See *Ronald D. James, Sr.*, Docket No. 03-1700 (issued August 27, 2003); *Kenneth J. Deerman*, 34 ECAB 641 (1983) (the evidence must convince the adjudicator that the conclusion drawn is rational, sound, and logical).

<sup>9</sup> Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. See *G.B.*, Docket No. 15-1138 (issued July 13, 2016); *A.D.*, 58 ECAB 149 (2006).

<sup>10</sup> See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

<sup>11</sup> *Supra* note 8.

elbow medial epicondylitis. The only report with an opinion on causal relationship is the March 7, 2014 Form CA-20 report checking a box marked “yes.” As discussed, this is of little probative value on the issue.<sup>12</sup>

In his January 23, 2015 report, Dr. Schwartz provided a history of a November 6, 2013 employment incident. He provided a number of diagnoses, including cervical (radiculopathy, foraminal stenosis, disc bulges), lumbar (derangement with probable radiculopathy and herniated discs), shoulder (derangement with probable rotator cuff tears or impingement), and carpal tunnel syndrome. As to causal relationship with employment, Dr. Schwartz opined that there was causal relationship between the history of injury and the “aforementioned diagnosis.” It is not clear whether he is referring to one of the above diagnoses or all of them. Moreover, Dr. Schwartz provided no medical rationale explaining why he believes that a specific diagnosis was causally related to the employment incident.<sup>13</sup> He referenced state workers’ compensation medical guidelines, without providing further explanation on the issue of causal relationship with employment.

It is appellant’s burden of proof to submit medical evidence of sufficient probative value to establish the claim for compensation. For the reasons discussed, she has not met her burden of proof in this case.

On appeal, appellant’s counsel briefly argues that the evidence was not properly analyzed. The Board has reviewed the evidence of record and finds that there is no rationalized medical opinion establishing a diagnosed condition causally related to the November 6, 2013 employment incident.

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 established an injury causally related to a November 6, 2013 employment incident.

---

<sup>12</sup> *Id.*

<sup>13</sup> *Supra* note 8.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 8, 2016 is affirmed.

Issued: August 11, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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