

ISSUE

The issue is whether appellant sustained an injury causally related to the June 17, 2014 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The facts relevant to the instant appeal are set forth below.

On June 24, 2014 appellant, then a 30-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging that on June 17, 2014 he experienced numbness in both legs and a pinched nerve or pulled muscles in his neck, shoulders, and spine. He related that his "office chair and walker locked into one another due to lack of space in [the] office. The chair I was on slipped out from under me and I hit the floor." Appellant stopped work on June 17, 2014.

Dr. Mircea Muresanu, Board-certified in emergency medicine, evaluated appellant in the emergency room on June 17, 2014 for back and bilateral knee pain after his walker got stuck in an office chair and he fell forward. He provided a past medical history of appellant walking "with help of [a] walker, slipped lumbar dis[c]s." Dr. Muresanu indicated that x-rays of the knees and lumbar spine did not show a fracture. He diagnosed a fall with knee and back pain.

On June 18, 2014 Dr. Alex Racco, an osteopath, discussed appellant's complaints of neck pain and tingling in the lower extremities after he fell forward on his knees at work after slipping between his chair and walker. He diagnosed lumbar radiculopathy and cervical radiculitis. Dr. Racco instructed appellant to follow up with a workers' compensation physician.

A July 1, 2014 magnetic resonance imaging (MRI) scan study of the lumbar spine revealed disc bulges at L1-2 through L4-5 and a disc herniation at L5-S1 with "curvature of the lumbar spine with convexity to the left." A July 1, 2014 MRI scan study of the cervical spine revealed disc bulges at C2-3 through C6-7 "more prominent than on the prior exam[ination]," a new left paracentral disc herniation at C5-6, and foraminal narrowing at C2-3 through C4-5 as a result of unciniate process hypertrophy.

Dr. Racco, in a July 8, 2014 report, advised that he was treating appellant after a fall at work. He noted that an orthopedist found that he was unable to work.

In a statement dated July 22, 2014, appellant indicated that on June 17, 2014 he sustained numbness in his legs and feet after he fell forward hitting the ground with his knees. He related, "On that morning, I went to move my chair and the wheel of the chair got tangled with the one of my walker and I went flying one way and the chair the other."

³ Docket No. 15-1166 (issued August 24, 2015).

On July 31, 2014 Dr. Racco noted that he had evaluated appellant on June 18, 2014 after he fell at work. He opined that diagnostic studies showed a herniated cervical disc.

In a report dated July 31, 2014, Dr. Todd Schlifstein, an osteopath, reviewed appellant's symptoms of pain in the posterior, paraspinal area of the neck, numbness and tingling of both arms, and lumbar spine. He indicated that appellant had experienced an accident at work on June 17, 2014. Dr. Schlifstein diagnosed primary cervical disc displacement, primary low back syndrome, back strain, radicular symptoms of the upper and lower extremities, and lumbar disc displacement. He noted that appellant was off work.

Counsel, on August 5, 2014, asserted that appellant had been injured in the course of his employment duties and noted that after appellant fell he was taken to the emergency room at the hospital where he worked.

By decision dated August 21, 2014, OWCP denied appellant's claim as the medical evidence of record was insufficient to establish a diagnosed condition as a result of the June 17, 2014 employment incident.

On September 5, 2014 Dr. Schlifstein noted treating appellant for low back syndrome, cervical disc displacement, and chondromalacia of the patella. He opined that appellant was totally disabled from July 31 to December 30, 2014.

In a report dated September 15, 2014, Dr. Schlifstein related that appellant had symptoms of "neck pain at the back of his neck and down his arms after a fall at work on June 17, 2014. [Appellant] has numbness and tingling in his left and right arms. [He] has low back pain with some numbness and tingling from the same accident." Dr. Schlifstein reviewed the findings of herniated discs at C5-6 and L5-S1 on MRI scans. He related, "[Appellant] has no previous history of neck and back pain prior to the accident. [His] injuries and conditions mentioned above are causally related to [the] employment accident caused on June 17, 2014. At the current time, [appellant] is at a level of total disability."

On October 3, 2014 appellant, through counsel, requested reconsideration. He asserted that the September 15, 2014 report from Dr. Schlifstein was sufficient to show that he sustained an injury in the course of his federal employment.

In progress reports dated November 11, 2014 and March 31, 2015, Dr. Schlifstein diagnosed cervical disc displacement, low back syndrome, back strain, radiculopathy of the upper and lower extremities, and lumbar disc displacement. He listed findings on examination and noted that appellant was out of work.

By decision dated April 6, 2015, OWCP denied modification of its August 21, 2014 decision. It found that Dr. Schlifstein did not provide any rationale for his opinion that the June 17, 2014 employment incident resulted in the diagnosed conditions.

Appellant appealed to the Board. In a decision dated August 24, 2015, the Board affirmed the April 6, 2015 decision, finding that the medical evidence of record was

insufficiently rationalized to show that he sustained a diagnosed condition as a result of the June 17, 2014 work incident.⁴

On April 23, 2016 appellant, through counsel, again requested reconsideration and submitted additional medical evidence. Counsel argued that the medical evidence supported that appellant's attending physician was aware of his preexisting cerebral palsy and was sufficient to establish fact of injury.

In a report dated January 15, 2016, Dr. Schlifstein indicated that appellant had preexisting cerebral palsy. He related that on June 17, 2014 appellant "got injured at work trying to go from sit[ting] to stand[ing], [and] had a slip and fall causing neck and lumbar spine injury." Dr. Schlifstein attributed appellant's disc herniation to the fall, noting that he did not have pain in his leg or back prior to the incident.

Dr. Racco, on January 28, 2016, advised that appellant had cerebral palsy unrelated to his current injury.

By decision dated May 3, 2016, OWCP denied modification of its prior decision. It found that the medical evidence of record was insufficient to show that appellant experienced a herniated disc on June 17, 2014.

On appeal counsel contends that he submitted factual and medical evidence sufficient to establish that appellant sustained an injury in the performance of duty. He notes that appellant's physicians knew of his cerebral palsy and that it was unrelated to the condition resulting from the work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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.⁵ 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.⁶

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.⁷ Second, the

⁴ See *supra* note 3.

⁵ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁶ See *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁷ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁸ An employee may establish that the employment incident occurred as alleged, but fail to show that his disability and/or condition relates to the employment incident.⁹

ANALYSIS

In a prior decision, the Board determined that the medical evidence then of record was insufficient to establish that appellant sustained an injury due to the June 17, 2014 work incident. In particular, it found that the June 17, 2014 report from Dr. Muresanu, the June and July 2014 reports from Dr. Racco, and the September 2014 through March 2015 reports from Dr. Schlifstein either did not address causation or were not based on an accurate medical history, and thus were of diminished probative value. The Board noted that the June 17, 2014 emergency room report from Dr. Muresanu contained a history of appellant using a walker as a result of slipped discs, but that this history was not addressed by the other reports of record. It further found that Dr. Schlifstein had not provided rationale for his opinion that the diagnosed conditions of a herniated discs at C5-6 and L5-S1 resulted from the June 17, 2014 work incident.

Appellant, through counsel, requested reconsideration and submitted additional medical evidence.

The Board finds that the additional evidence submitted is insufficient to establish an injury causally related to the June 17, 2014 employment incident. In a report dated January 15, 2016, Dr. Schlifstein discussed appellant's history of preexisting cerebral palsy. He noted that on June 17, 2014 appellant fell at work injuring his cervical and lumbar spine when he tried to stand from a seated position. Dr. Schlifstein opined that he sustained a herniated disc at the time of his fall, providing as a rationale that he did not experience any back or leg pain before the fall. However, a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.¹⁰ Dr. Schlifstein further did not address whether appellant used a walker for preexisting slipped discs, as indicated by the emergency room report, or as a result of another condition such as his cerebral palsy.

Dr. Racco, on January 28, 2016, advised that appellant had cerebral palsy unrelated to his current injury. He did not attribute any diagnosed medical condition to the June 17, 2014 work incident and thus his opinion is of little probative value.

On appeal counsel argues that the evidence submitted supports that appellant sustained an employment injury on June 17, 2014. He notes that his physicians were aware that he had cerebral palsy. Appellant has the burden, however, to submit medical evidence based on a

⁸ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁹ *Id.*

¹⁰ *See D.R.*, Docket No. 16-0411 (issued June 10, 2016); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

complete and accurate history explaining how the employment incident described caused or contributed to the diagnosed medical condition and supporting that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical, and rationale.¹¹ He did not submit such evidence and thus did not meet his 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury causally related to the June 17, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹¹ *John W. Montoya*, 54 ECAB 306 (2003).