



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> On October 24, 2014 appellant, then a 52-year-old mine, safety, and health inspector, filed a traumatic injury claim (Form CA-1) alleging that on October 8, 2014 he slipped and fell during an equipment inspection and sustained injuries to his right calf, elbow, shoulder and neck. Appellant did not stop work. The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The facts relevant to the present appeal are set forth as follows.

Appellant was treated by Dr. Richard T. Rutherford, a Board-certified family practitioner, on December 13, 2014, for knee, neck, and shoulder injuries. He reported that on October 8, 2014 he fell off a piece of equipment at work and injured his right knee, neck and right shoulder. Appellant noted an essentially normal physical examination in the upper and lower extremities and diagnosed gastroesophageal reflux disease, hyperlipidemia, coronary artery disease, cervical root lesions, right shoulder joint pain, and neuralgia. In a workers' compensation form also dated December 13, 2014, Dr. Rutherford reiterated that on October 8, 2014 appellant fell off a piece of equipment at work and injured his right shoulder and neck. He noted that appellant could return to work without restrictions.

On January 15, 2015 OWCP denied the claim because the medical evidence submitted was insufficient to establish a causal relationship between the claimed conditions and work events.

Thereafter, appellant requested reconsideration and submitted evidence from Dr. Terry who treated him on February 19, 2015 for injuries sustained when he fell off a piece of equipment on October 8, 2014. He reported pain in the right shoulder, neck, head, and upper back, with right arm numbness.

In an April 2, 2015 report, Dr. Terry treated appellant for persistent pain in the right shoulder, neck, and arm. He noted reviewing the January 15, 2015 OWCP decision. Dr. Terry opined that appellant sustained an injury causally related to an accident in which he fell off a piece of equipment. Appellant reported that when he fell he tried to prevent the fall by grabbing with his arm. Dr. Terry opined that this action caused problems with his right shoulder, right paracervical muscles, right cervical nerve roots, brachial plexus, as well as the symptomology which exists and was continually exhibited from this area. He noted awaiting further studies to support the actual anatomic changes which may have occurred at the time of this injury. Dr. Terry noted that appellant's problems emanated from this injury and that his diagnosed conditions were real. Examination revealed tenderness on the right paracervical region, no gross atrophy about his shoulders, no evidence of gross neurologic deficit of the forearm or hand, and limitation of right shoulder motion. Dr. Terry diagnosed shoulder pain and neck pain.

By decision dated September 3, 2015, OWCP denied appellant's reconsideration request, finding that the evidence was insufficient to warrant further merit review. Appellant filed an appeal of that decision with the Board.

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<sup>3</sup> Docket No. 16-0722 (issued June 2, 2016).

Subsequent to OWCP's September 3, 2015 nonmerit decision, appellant submitted a September 17, 2015 report from Dr. Terry. He noted that appellant did not have pain before the October 8, 2014 work incident. Appellant diagnosed cervical stretch, shoulder impingement, and pain and opined that the diagnosis was caused by the work injury. He reported slipping on the track of a large piece of equipment and his arm was pulled on the right side upwards as he lost balance and his weight went onto his arm with a significant stretch to this extremity. Since that time, appellant reported pain in the paracervical area and trapezius muscle of the right shoulder which did not improve with conservative treatment. Dr. Terry noted that an electromyogram revealed poor activation of the trapezius muscle and a magnetic resonance imaging scan of the right shoulder revealed a partial thickness rotator cuff tear. He opined that, when appellant slipped on the bulldozer, he had a traction injury to his right upper extremity straining the nerves from the cervical spine, resulting in a rotator cuff partial thickness tear and an anterior inferior labral injury from the upward pull on the shoulder. Dr. Terry diagnosed shoulder pain, neck pain, cervical nerve root injury, partial thickness right rotator cuff tear, labral tear of shoulder, trapezius muscle strain, and traction injury of cervical nerve root. He recommended surgery.

In a decision dated June 2, 2016, the Board set aside a September 3, 2015 decision of OWCP. The Board found that OWCP had improperly refused to reopen appellant's claim for further review on its merits under 5 U.S.C. § 8128. The Board found that appellant had submitted a new report from Dr. Roy C. Terry, a Board-certified orthopedist, dated April 2, 2015 which was sufficient to require reopening appellant's case for further review on its merits. The Board remanded the case for OWCP to reopen appellant's claim for a merit review.<sup>4</sup>

Following the Board's June 2, 2016 decision, by decision dated June 14, 2016, OWCP denied modification of its prior decision, finding that Dr. Terry's reports were insufficient to establish the claim.

### **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 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>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at

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<sup>4</sup> *Id.*

<sup>5</sup> *Gary J. Watling, 52 ECAB 357 (2001).*

the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>6</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.<sup>7</sup>

### ANALYSIS

It is not disputed that on October 8, 2014 appellant slipped and fell during an equipment inspection. It is also not disputed that appellant was diagnosed with cervical nerve root injury, partial thickness right rotator cuff tear, labral tear of shoulder, strain of the trapezius muscle, traction injury of cervical nerve root, and shoulder impingement. However, the Board finds that appellant has not submitted sufficient medical evidence to establish that the accepted incident caused or aggravated his diagnosed cervical, right shoulder, and trapezius conditions.

In the April 2, 2015 report, Dr. Terry found appellant's condition causally related to an accident where he fell off a piece of equipment on October 8, 2014. Appellant reported that when he fell he tried to prevent the fall by grabbing with his arm. Dr. Terry opined that this action caused problems with appellant's right shoulder, right paracervical muscles, right cervical nerve roots, and brachial plexus. He noted that appellant's problems emanated from this injury which caused shoulder and neck pain. Although Dr. Terry supported causal relationship, he failed to provide sufficient medical rationale explaining the basis of his conclusion regarding the causal relationship between appellant's diagnosed conditions and his work duties.<sup>8</sup> He did not explain how falling off a piece of equipment would have caused or aggravated the diagnosed conditions. Therefore, this evidence is insufficient to meet appellant's burden of proof.<sup>9</sup>

A September 17, 2015 report from Dr. Terry noted that appellant did not have pain symptoms prior to his work-related accident of October 8, 2014. Since this time, appellant reported pain in the shoulder, paracervical area and trapezius muscle of the right shoulder. Dr. Terry opined that when appellant slipped on the bulldozer he sustained a traction injury to his right upper extremity straining the nerves from the cervical spine and right shoulder resulting in a right rotator cuff partial thickness tear and an anterior inferior labral injury. He noted diagnoses that included cervical nerve root injury, partial thickness right rotator cuff tear, labral tear of shoulder, and trapezius muscle strain. Again, Dr. Terry did not explain why such activity would result in a causal relationship to the diagnosed conditions. He did not adequately explain why slipping off a piece of equipment on October 8, 2014 was a competent cause or contributor

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<sup>6</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>9</sup> *See L.D.*, Docket No. 09-1503 (issued April 15, 2010) (the fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two).

to appellant's diagnosed conditions.<sup>10</sup> Dr. Terry did not sufficiently explain the medical reasoning, or rationale, that formed the basis of his conclusion on causal relationship. Therefore, this report is insufficient to establish appellant's claim.

Appellant submitted a December 13, 2014 report from Dr. Rutherford who treated him for knee, neck, and shoulder injuries. He reported that on October 8, 2014 he fell off a piece of equipment at work and injured his right knee, neck, and right shoulder. Dr. Rutherford noted an essentially normal physical examination and diagnosed cervical root lesions, right shoulder joint pain, and neuralgia. Similarly, in a workers' compensation form dated December 13, 2014, he noted that on October 8, 2014 appellant fell off a piece of equipment at work and injured his right shoulder and neck. Dr. Rutherford noted that appellant could return to work without restrictions. The Board finds that, although Dr. Rutherford noted that appellant was injured at work, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's cervical and right shoulder conditions and the factors of employment.<sup>11</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence of record is also of limited probative value as it does not provide an opinion on the causal relationship between the October 8, 2014 work incident and appellant's diagnosed medical conditions.<sup>12</sup>

Consequently, appellant has not submitted sufficient medical evidence to establish that that appellant's work activities on October 8, 2014 caused or aggravated a diagnosed medical condition.

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 left ankle injury causally related to the October 8, 2014 employment incident.

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<sup>10</sup> *Supra* note 8.

<sup>11</sup> *See T.M.*, Docket No. 08-975 (issued February 6, 2009) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>12</sup> *A.D.*, 58 ECAB 149 (2006) (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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 14, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 5, 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