

FACTUAL HISTORY

On July 18, 2013 appellant, then a 34-year-old carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained swelling of the back of his head, a possible concussion, and neck stiffness when empty tubs stacked too high fell on his neck and head.

By letter dated July 30, 2013, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence required and given 30 days to provide this information.

In support of his claim appellant submitted an August 1, 2013 cervical x-ray and disability notes dated August 5 and 19, 2013 from Dr. Faheem A. Abbasi, a treating Board-certified physiatrist. The cervical x-ray revealed C4-5 and C6-7 degenerative changes.

By decision dated September 6, 2013, OWCP denied appellant's claim as it found that he had failed to establish fact of injury. Specifically, it found the record contained no medical evidence diagnosing a condition in connection with the accepted July 18, 2013 employment incident.

In progress notes dated July 18, 22, and 30, 2013, Dr. Abbasi reported that appellant was seen for neck pain and that on July 22, 2012 he was also seen for hip and low back pain. Appellant related that the neck pain was new, but the hip and back pain were old symptoms. He had advised that the neck pain started after empty boxes fell on his neck and head at work on July 18, 2013. Physical examination findings were provided. Diagnoses included cervical disc displacement without myelopathy, cervicgia/neck pain, nonallopathic cervical region lesion, cervical sprain/strain due to an employment injury, muscle spasm, and lumbar facet disease.

Dr. Abbasi, in progress notes dated August 5, 2013, related that appellant had been seen for tightness and neck pain since July 18, 2013 when he was at work and empty boxes fell on his neck and head. Appellant related that the neck pain began on July 18, 2013, while his low back pain has been present for the past seven years. A cervical examination revealed painful and limited range of motion, positive Spurling's test on the right side, and painful facet loading. Diagnoses included cervical disc displacement without myelopathy, cervicgia/neck pain, nonallopathic cervical region lesion, cervical sprain/strain due to an employment injury, muscle spasm, and lumbar facet disease.

In progress notes dated October 4, November 11 and December 2, 2013, Dr. Abbasi noted that appellant was seen for pain complaints involving his neck, lower back, and upper back. Under history of illness, he reported that appellant's pain had been persistent and began several years ago. Dr. Abbasi noted that appellant had suffered a neck injury at work a few months prior when boxes fell on his head. On November 11 and December 2, 2013 he reviewed a January 29, 2011 magnetic resonance imaging (MRI) scan which revealed mild L3-4 disc bulging and facet hypertrophy, mild L4-5 facet degeneration and disc bulging, C5-6 and C6-7 degenerative changes, and diffuse L5-S1 disc bulge. A cervical spine physical examination revealed pain and limited range of motion, right positive Spurling's test, painful facet loading, positive jump sign, and trigger points noted over the scapulothoracic area. Diagnoses included

lumbosacral disc displacement without myelopathy, cervical spondylosis without myelopathy, and nonallopathic lumbar region lesion.

By letter dated September 4, 2014, appellant's counsel requested reconsideration and submitted medical evidence in support of his request.

In a November 13, 2013 report, Dr. Abbasi noted that appellant's neck pain began after empty boxes fell on his neck and head on July 18, 2013 while he was at work. Since the July 18, 2013 incident appellant continued to have neck pain and tightness. Dr. Abbasi diagnosed cervical strain/sprain and cervical disc herniation bulge, which he attributed to the July 18, 2013 employment incident.

Dr. Arthur Becan, a Board-certified orthopedic surgeon, reported on July 22, 2014 that appellant had physical examination findings, with diagnoses of chronic post-traumatic cervical strain/sprain, herniated cervical discs, left C5-7 cervical radiculopathy, aggravation of preexisting lumbosacral facet degeneration, chronic post-traumatic lumbosacral strain/sprain, and right L5 radiculopathy. He opined that the July 18, 2013 employment incident "was the competent producing factor" of appellant's objective and subjective findings.

By decision dated December 2, 2014, OWCP denied modification of the September 6, 2013 decision, finding the evidence insufficient to establish that the diagnosed conditions were causally related to the accepted July 18, 2013 employment incident.

In a letter dated May 22, 2015, counsel again requested reconsideration and submitted the following evidence in support of the request.

A December 11, 2014 MRI scan revealed cervical spondylotic changes greater on the right and most significantly at C5-6 and C6-7.

In a February 20, 2015 report, Dr. Becan noted that on July 18, 2013 appellant was struck on the head by falling mail which caused a cervical spine extension injury and a low back injury as the result of appellant's twisting his back when he fell backwards. Diagnoses included traumatic cervical strain/sprain, cervical herniated discs, left C5, C6, C7 cervical radiculopathy, aggravation of preexisting lumbosacral spine pathology, chronic post-traumatic lumbosacral strain/sprain and L5 right radiculopathy. A review of a December 11, 2014 cervical MRI scan revealed C3-4, C4-5 bulging discs and C4-5, C6-7 disc osteophyte complexes. Dr. Becan also reviewed an April 8, 2014 electromyography and nerve conduction studies which showed L5 lumbar radiculopathy.

By decision dated August 20, 2015, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Supra* note 1.

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.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.¹¹

ANALYSIS

Appellant alleged that he injured his neck and head on July 18, 2013 when empty tubs, which were stacked too high, fell on his neck and head. OWCP has accepted that the July 18, 2013 employment incident occurred. The issue is whether the medical evidence establishes that appellant sustained an injury as a result of this incident

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

⁹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹⁰ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

The Board finds that appellant has not established that the July 18, 2013 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.¹²

In support of his claim appellant initially submitted medical reports and disability notes from Dr. Abbasi. Dr. Abbasi diagnosed cervical disc displacement without myelopathy, cervicgia/neck pain, nonallopathic cervical region lesion, cervical sprain/strain, muscle spasm, and lumbar facet disease. He opined that the cervical sprain/strain and cervical disc herniation bulge had been caused by the July 18, 2013 employment incident. Dr. Abbasi advised that appellant was totally disabled. However, he failed to provide any rationale explaining how the July 18, 2013 employment incident caused the diagnosed cervical conditions. Medical conclusions unsupported by rationale are of diminished probative value.¹³ The medical reports do not provide a rationalized opinion explaining how appellant sustained a cervical condition on July 18, 2013. The Board also notes that on November 11 and December 2, 2013 Dr. Abbasi reviewed a January 29, 2011 MRI scan, which he noted revealed C5-6 and C6-7 degenerative changes. Dr. Abbasi's conclusory statement that appellant's cervical conditions were caused by the July 18, 2013 employment incident is further diminished by his failure to explain the relationship of the degenerative cervical changes found in the 2011 MRI scan study, to appellant's current condition. Thus, his reports are insufficient to support appellant's burden of proof.

Appellant also submitted reports dated February 20 and July 22, 2014 from Dr. Becan who diagnosed traumatic cervical and lumbar strains/sprains, cervical herniated discs, left C5, C6, C7 cervical radiculopathy, aggravation of preexisting lumbosacral spine pathology, chronic post-traumatic lumbosacral strain/sprain, and L5 right radiculopathy. Dr. Becan's reports are insufficient to establish causal relationship because he does not provide a fully-rationalized explanation of how the July 18, 2013 employment incident caused appellant's injuries; rather he stated in his July 22, 2013 report a general conclusion that the July 18, 2013 employment incident was a competent producing factor for appellant's subjective and objective findings. To meet his burden of proof, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.¹⁴ Dr. Becan's general statement is not a rationalized explanation of a causal relationship.

In the February 20, 2014 report, Dr. Becan opined that appellant's conditions were caused when he sustained a cervical spine extension injury due to mail falling on his head and a low back condition as the result of twisting when he fall backwards. In his CA-1 form appellant did not state that mail fell on his head nor that he twisted his back and fell backwards. He claimed a neck and head injury as the result of the July 18, 2013 employment incident when empty tubs fell on his head. Appellant did not claim a lumbar back or lower extremity condition on the Form CA-1 as a result of the July 18, 2013 employment incident. The Board has held that

¹² *J.J.*, *supra* note 10; *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹³ See *V.M.*, Docket No. 15-601 (issued May 19, 2015); *Willa M. Frazier*, 55 ECAB 379 (2004); *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

¹⁴ *J.C.*, Docket No. 11-1513 (issued April 16, 2012); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value.¹⁵ Thus, Dr. Becan's February 20, 2014 report is insufficient to establish his claim. Accordingly, appellant has not submitted medical evidence sufficient to establish that the accepted employment incident of July 18, 2013 caused a cervical or lumbar condition and therefore he has not met his burden of proof to establish an injury sustained in the performance of duty.

The record contains MRI scans diagnosing cervical conditions. As they are diagnostic tests, causal relationship was not addressed and are insufficient to support appellant's claim that his cervical condition was causally related to the accepted July 18, 2013 employment incident.¹⁶

On appeal counsel argues that the July 18, 2013 employment incident caused a direct injury to appellant's cervical and upper extremities as well as aggravating his preexisting lumbar and lower extremity conditions. As discussed above, appellant failed to submit any rationalized medical evidence explaining how the diagnosed conditions were causally related to the accepted July 18, 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 met his burden of proof to establish an injury on July 18, 2013 causally related to the accepted employment incident.

¹⁵ *M.W.*, 57 ECAB 710 (2006); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

¹⁶ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (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).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 20, 2015 is affirmed.

Issued: February 23, 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