

FACTUAL HISTORY

On December 9, 2013 appellant, then a 39-year-old revenue officer, filed a traumatic injury claim (Form CA-1) alleging that on November 27, 2013 she sustained lower back, neck, wrist, elbow, and upper arm stiffness after slipping and falling in the parking lot of the employing establishment at 7:45 a.m. Her supervisor noted that her regular work hours were from 7:00 a.m. to 5:30 p.m. He also related that appellant left the employing establishment building to return to her car to retrieve something when the incident occurred. The record does not indicate that appellant stopped work.

On November 27, 2013 appellant's supervisor filed an occupational injury report indicating that on that date at approximately 7:35 a.m. appellant sustained injuries to her lower back, neck, wrists, elbows, and upper arms when she slipped and fell in the parking lot near the employee entrance, while walking back to her car.

In a December 10, 2013 unsigned medical note, the date of injury was recorded as December 10, 2013. Diagnoses of headache and neck pain were reported.³

On December 12, 2013 appellant was examined by Dr. Jay J. Jones, a Board-certified family practitioner, who related in a report that appellant sustained injuries on November 27, 2013 when she fell down in a parking lot at work. He reported that he had examined appellant on two prior occasions on November 11 and 15, 2013 and had performed occipital nerve blocks. Dr. Jones explained that her headaches and upper cervicalgia were markedly improved and under control. He reviewed appellant's history and conducted an examination. Dr. Jones observed limited range of motion of appellant's neck and active trigger points in the upper trapezius cervical paraspinal musculature. He also noted tenderness to palpation of the greater and lesser occipital nerves bilaterally.

Examination of appellant's hips and elbow revealed relatively full and pain-free range of motion. Upon examination of the lumbar spine, Dr. Jones observed limited flexion and extension. He also noted tenderness over the sacroiliac (SI) joints bilaterally and trigger points. Dr. Jones diagnosed exacerbation of occipital neuralgia and upper cervicalgia, right rotator cuff tendon contusion, lumbar whiplash with resultant primarily muscle based pain and possible SI pain. He opined that appellant had an exacerbation of her upper cervicalgia and cervicogenic headache with new symptoms in the posterior lateral acromial area on the right and pain at the lumbosacral junction bilaterally. Dr. Jones concluded that appellant's current clinical situation had either been exacerbated by or caused by the fall in the parking lot. He also provided handwritten prescription notes recommending a physical therapy consult and a duty status report.

In a December 16, 2013 report, Dr. Jones noted that appellant's signs and symptoms were unchanged from his December 12, 2013 clinical evaluation. He explained that he was supporting appellant's workers' compensation claim because he believed that appellant had experienced an exacerbation of occipital neuralgia and upper cervicalgia secondary to whiplash, increase in myofascial pain syndrome and upper cervical facet syndrome, and right rotator cuff tendon contusion. Upon examination, Dr. Jones observed tenderness to palpation of appellant's bilateral greater and lesser occipital nerves and large hard active trigger points in the upper semispinalis

³ Dr. David McClary, a Board-certified family practitioner, was noted as "provider."

capitis, splenius capitis, bilateral levator scapula, and upper trapezius. He noted preprocedure diagnoses of bilateral greater and lesser neuralgia with cervical spine and upper shoulder myofascial pain syndrome. Appellant received trigger point injections and nerve blocks. Dr. Jones provided a December 16, 2013 attending physician's report and a work excuse note which indicated that appellant was examined on December 16, 2013.

Appellant submitted various physical therapy reports indicating that she received treatment on December 16, 18, and 23, 2013 and January 17 and 22, 2014.

By letter dated September 11, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish her traumatic injury claim. It requested that she respond to an attached questionnaire to substantiate the factual elements of her claim and submit medical evidence to demonstrate that she sustained a diagnosed condition causally related to the November 27, 2013 employment incident.

On September 22, 2014 appellant responded to OWCP's development letter. She stated that when the alleged injury occurred she was getting something from the car. Appellant noted that she was injured in the parking lot, which was managed by the building or property manager. She explained that she was required to park there by her employing establishment.

In a decision dated November 13, 2014, OWCP denied appellant's claim, finding that the November 27, 2013 incident did not occur in the performance of duty. It determined that she failed to establish that she was in the performance of her official work duties when the alleged November 27, 2013 injury occurred.

On December 5, 2014 OWCP received appellant's request for reconsideration. Appellant stated that she was in the parking lot because she was retrieving her work cell phone charger from her car. She asserted that she fulfilled all of the requirements of her claim and that her only error was that she did not state that she was retrieving her work cell phone charger from the car. Appellant explained that she assumed her injury was covered because it occurred on work premises.

By decision dated April 30, 2015, OWCP affirmed the November 13, 2014 denial decision with modification. It accepted that appellant was in the performance of duty on November 27, 2013 when she slipped and fell in the employing establishment parking lot. OWCP, however, denied the claim finding insufficient medical evidence to establish that she sustained a diagnosed condition causally related to the accepted event.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁵ including that she sustained an injury in the performance of duty and that any specific

⁴ *Supra* note 1.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁶

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.⁷ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁹ An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.¹⁰

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.¹¹ 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.¹² The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician’s opinion.¹³

ANALYSIS

Appellant alleged that on November 27, 2013 she sustained injuries when she slipped and fell down in the parking lot at work, while returning to her car to retrieve her work cell phone charger. OWCP accepted that the November 27, 2013 incident occurred as alleged and that it occurred in the performance of duty, but denied her claim finding insufficient medical evidence to establish that she sustained a diagnosed condition causally related to the accepted incident.¹⁴

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁸ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁹ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹¹ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹³ *James Mack*, 43 ECAB 321 (1991).

¹⁴ The activity of retrieving an item such as a cell phone from an automobile is not in the performance of duty if it does not occur during work hours and as a requirement of employment. *Cf.*, *B.B.*, Docket No. 13-1730 (issued January 13, 2014), wherein the Board determined that the retrieval of a personal cellphone from an automobile an hour before the employee was required to be on duty benefited him not his employer.

The Board finds that appellant did not meet her burden of proof to establish her traumatic injury claim.

Appellant submitted reports of Dr. Jones dated December 12 and 16, 2013. Dr. Jones noted that he had examined appellant on two prior occasions and provided occipital nerve blocks. He reported that on November 27, 2013 appellant sustained injuries when she fell down in a parking lot at work. Upon examination of appellant's lumbar spine, Dr. Jones observed tenderness over the SI joint bilaterally and trigger points. He diagnosed exacerbation of occipital neuralgia and upper cervicalgia, right rotator cuff tendon contusion, lumbar whiplash with resultant primarily muscle based pain, and possible SI pain. Dr. Jones indicated that appellant sustained an exacerbation of her upper cervical and cervicogenic headache with new symptoms. He explained that appellant's current clinical situation had either been exacerbated by or caused by the fall in the parking lot. In a December 16, 2013 report, Dr. Jones confirmed that he supported appellant's workers' compensation claim because he believed that appellant had experienced an exacerbation of occipital neuralgia and upper cervicalgia secondary to whiplash, increase in myofascial pain syndrome and upper cervical facet syndrome, and right rotator cuff tendon contusion.

Dr. Jones accurately described the November 27, 2013 incident and provided examination findings and a diagnosed condition. He opined that appellant sustained an exacerbation of her occipital neuralgia and upper cervicalgia, myofascial pain syndrome, upper cervical facet syndrome, and right rotator cuff tendon contusion due to the November 27, 2013 slip and fall at work. Although Dr. Jones provided an opinion on causal relationship, he did not offer any rationalized medical explanation to support his opinion. The Board has held that 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.¹⁵ A rationalized medical opinion is particularly needed in this case as appellant was receiving medical treatment for preexisting conditions. Dr. Jones did not adequately explain how appellant's current conditions resulted from the November 27, 2013 incident as opposed to her previous conditions.

Appellant also submitted an unsigned medical note dated December 10, 2013. While this note indicated that appellant's provider was Dr. McClary, there is no indicia on the note that it was prepared by Dr. McClary. This note is therefore of no probative value.¹⁶

OWCP also received a number of physical therapy records. These physical therapy records are of no probative value regarding the issue of causal relationship because FECA does not recognize physical therapists as physicians.¹⁷

¹⁵ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁶ *Merton J. Sills*, 39 ECAB 572 (1988) (unsigned medical evidence with no adequate indication that it was completed by a physician is not considered probative medical evidence); *see also T.B.*, Docket No. 15-1 (issued July 1, 2015).

¹⁷ *See* 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. Physical therapists are not physicians under FECA, *see S.S.*, Docket No. 15-780 (issued September 3, 2015).

On appeal appellant alleges that Dr. Jones reported on two occasions that she suffered whiplash because of the fall at work. As noted above, Dr. Jones failed to adequately explain, based on medical rationale, how appellant sustained a diagnosed condition causally related to the November 27, 2013 employment incident. Causal relationship is a medical question that must be established by probative medical opinion from a physician.¹⁸ Because appellant has not provided such probative medical evidence in this case, the Board finds that she did not meet her burden of proof to establish her claim.

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 an injury causally related to the November 27, 2013 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 18, 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

¹⁸ *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, 57 ECAB 137 (2005).