

ISSUE

The issue is whether appellant met his burden of proof to establish that his cervical condition is causally related to a March 4, 2014 employment incident.

On appeal, counsel contends that the injury to appellant's neck is obvious and is the kind of injury where minimal medical evidence is required. He further argues that appellant submitted substantial uncontroverted medical evidence that he sustained a serious work injury to his neck on March 4, 2014.

FACTUAL HISTORY

On August 18, 2014 appellant, a 46-year-old explosives handler, filed a traumatic injury claim (Form CA-1) alleging that he sustained a cervical injury on March 4, 2014 as a result of a coworker jerking back the chair he was sitting on at work. He reported that he was sitting in a desk chair when his coworker, P.I., came up behind him and jerked the chair backwards and then thrust it forward very forcefully causing injury. The employing establishment stated that appellant had a preexisting degenerative cervical spine condition that was discovered on December 30, 2013, with symptoms commencing on December 19, 2013, for which OWCP denied a previous claim under file number xxxxxx862.⁴

In an April 4, 2014 letter, the employing establishment controverted appellant's claim, reiterating that he had a preexisting cervical condition as of December 2013 and OWCP had denied his previous claim.

A magnetic resonance imaging (MRI) scan dated January 10, 2014 revealed cervical spondylosis at C4-5, C5-6, and C6-7 and active inflammation at C5-6 with marrow edema involving the endplates.

In a March 4, 2014 report Dr. Kevin Moore, a Board-certified emergency medicine physician, diagnosed cervical strain. He reported that appellant had been sitting in a chair when someone jerked the seat back causing him increased pain to the left side of the neck.

On April 2, 2014 Dr. John Gorup, a Board-certified orthopedic surgeon, diagnosed osteoarthritis, herniated cervical disc, cervical spondylosis with myelopathy, and cervical radiculopathy. He asserted that appellant had a "three-month history of significantly worsening neck and left upper arm pain" and had been seen in the emergency room a couple of times. Dr. Gorup also indicated that appellant previously had anti-inflammatories, muscle relaxants, pain pills, chiropractic therapy, physical therapy, and interventional pain procedures, and nothing offered relief.

In a May 8, 2014 report, Dr. Jeffrey A. Beck, a Board-certified physiatrist, diagnosed cervical disc degeneration, cervical spondylosis, cervical spine stenosis, cervicgia, and cervical radiculopathy. He explained that appellant was seen on January 10, 2014 for a work injury that occurred on December 23, 2013 while he was operating a vehicle at work. Appellant reported a

⁴ Claim number xxxxxx862 was not accepted by OWCP. It is not before the Board on the present appeal.

large jarring incident which subsequently resulted in severe pain. A January 10, 2014 MRI scan demonstrated active inflammation/edema at C5-6 with endplate marrow changes consistent with an acute injury. Appellant underwent a left C6 and C7 transforaminal epidural steroid injection (TFESI) on January 15, 2014 which provided some mild relief, but continued to experience moderate-to-severe neck pain on February 25, 2014 at which time Dr. Beck opted to repeat the epidural steroid injection and consult a surgeon for persistent neck and left arm pain. He reported having a chair pulled out from underneath him on March 4, 2014 on the day prior to the injection on March 5, 2014. Dr. Beck asserted that the injection was not effective and appellant reported severe neck pain since the chair incident at work. A repeat MRI scan was obtained which demonstrated progression of the cervical marrow edema with increased cervical spine narrowing and new spinal cord signal abnormalities. Appellant underwent an anterior cervical discectomy and fusion (ACDF) at C4-5 and C5-6. Dr. Beck opined that he believed, with a reasonable degree of medical certainty, that appellant's injury was sustained as a direct result of a work injury and that his initial work injury was exacerbated by a second work injury.

In a September 3, 2014 letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted an accident report dated March 4, 2014 and reports dated March 18 and 28, 2014 from Dr. Beck who opined that appellant's cervical condition was not related to common arthritic changes, but rather directly related to a work injury. He also submitted progress reports dated April 30 through August 6, 2014 from Dr. Gorup.

By decision dated October 3, 2014, OWCP denied the claim finding that appellant failed to submit sufficient medical evidence to establish a causal relationship between his cervical condition and the March 4, 2014 employment incident.

On October 14, 2014 counsel requested an oral hearing before the Branch of Hearings and Review and submitted a February 10, 2015 report from Dr. Beck who reiterated his opinion that appellant's symptoms were caused by two separate work injuries. Dr. Beck opined that the first work injury, which occurred on December 23, 2013, was related to significant pounding while operating a piece of equipment over rough terrain which caused bone trauma (edema) and a moderate disc protrusion (cervical spinal stenosis and cervical radiculopathy). The second work injury occurred on March 4, 2014 when appellant's coworker sharply pulled a chair back that he was sitting in at the time, which exacerbated the bone trauma (edema) and caused progression of the disc protrusion from moderate to severe. Dr. Beck further opined that the second work injury caused spinal cord damage (cervical myelopathy).

A telephonic oral hearing was held on March 25, 2015. Thereafter, appellant submitted additional evidence including witness statements dated March 5 and 30, 2014. He further submitted a copy of an April 7, 2015 decision from an OWCP hearing representative regarding his prior claim under file number xxxxxx862.

By decision dated May 14, 2015, an OWCP hearing representative affirmed the prior decision.

On October 14, 2015 counsel requested reconsideration and appellant submitted an October 7, 2015 narrative statement reiterating the factual history of his claim. He also resubmitted the March 4, 2014 emergency room report from Dr. Moore, the February 10, 2015 report from Dr. Beck, and the witness statements dated March 5 and 30, 2014.

By decision dated November 10, 2015, OWCP denied modification of its prior decision.

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 timely filed within the applicable time limitation period of FECA, that an injury⁵ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶

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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.⁸

ANALYSIS

OWCP has accepted that the employment incident of March 4, 2014 occurred at the time, place, and in the manner alleged. The issue is whether appellant’s cervical condition resulted

⁵ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁶ See *T.H.*, 59 ECAB 388 (2008).

⁷ *Id.*

⁸ *Id.*

from the March 4, 2014 employment incident. The Board finds that appellant did not meet his burden of proof to establish causal relationship.

In his reports, Dr. Beck diagnosed cervical disc degeneration, cervical spondylosis, cervical spine stenosis, cervicgia, and cervical radiculopathy. He opined that appellant's cervical condition was not related to common arthritic changes, but rather directly related to a work injury. Dr. Beck concluded that the first work injury occurred on December 23, 2013 and caused bone trauma (edema) and a moderate disc protrusion (cervical spinal stenosis and cervical radiculopathy). The second work injury occurred on March 4, 2014 when appellant's coworker sharply pulled a chair back and then forward on which he was sitting, which exacerbated the bone trauma (edema) and caused progression of the disc protrusion from moderate to severe. Dr. Beck further opined that the second work injury caused spinal cord damage (cervical myelopathy). The Board finds that Dr. Beck failed to provide sufficient medical rationale explaining the mechanism of how being sharply maneuvered while sitting in a chair at work on March 4, 2014 caused appellant's cervical condition. Dr. Beck noted that appellant's condition occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.⁹ The need for rationale is particularly important as the evidence of record indicates that appellant had a preexisting cervical condition. Dr. Beck's opinion was based, in part, on temporal correlation. However, the Board has held that neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.¹⁰ Dr. Beck did not otherwise sufficiently explain the reasons why diagnostic testing and examination findings led him to conclude that the March 4, 2014 incident at work caused or contributed to the diagnosed conditions. Moreover, matters pertaining to any claim for an injury occurring on or around December 23, 2013 are not before the Board in the present appeal. Thus, the Board finds that the reports from Dr. Beck are insufficient to establish that appellant sustained an employment-related injury on March 4, 2014.

Dr. Moore diagnosed cervical strain and attributed appellant's condition to a March 4, 2014 incident. However, he did not provide any medical rationale explaining how being sharply maneuvered while sitting in a chair at work on March 4, 2014 caused or aggravated appellant's cervical condition. Thus, the Board finds that the report from Dr. Moore is insufficient to establish that appellant sustained an employment-related injury on March 4, 2014.

On April 2, 2014 Dr. Gorup diagnosed osteoarthritis, herniated cervical disc, cervical spondylosis with myelopathy, and cervical radiculopathy and noted that appellant had a "three-month history of significantly worsening neck and left upper arm pain." The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition

⁹ See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

¹⁰ See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

is of limited probative value on the issue of causal relationship.¹¹ Thus, appellant has not met his burden of proof with this evidence.

Other medical evidence of record, including diagnostic testing reports, is of limited probative value and is insufficient to establish the claim as it does not specifically address whether appellant's diagnosed conditions are causally related to the March 4, 2014 work incident.¹²

On appeal, counsel contends that the injury to appellant's neck is obvious and is the kind of injury where minimal medical evidence is required. He further argues that appellant submitted substantial uncontroverted medical evidence that he sustained a serious work injury to his neck on March 4, 2014. As noted above, appellant bears the burden of proof to establish an employment-related injury and he may establish that the employment incident occurred as alleged, yet fail to show that his condition relates to the employment incident.¹³ The Board finds that OWCP properly reviewed all of the medical evidence of record. As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to the March 4, 2014 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

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 that his cervical condition is causally related to a March 4, 2014 employment incident.

¹¹ See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹² See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (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).

¹³ See *supra* notes 5 to 7.

ORDER

IT IS HEREBY ORDERED THAT the November 10, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 7, 2016
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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