

ISSUE

The issue is whether appellant met his burden of proof to establish an injury causally related to an April 7, 2014 employment incident.

On appeal counsel asserts that the September 22, 2016 decision is deficient because it ignored medical reports that established that appellant had right shoulder osteoarthritis and right shoulder loose bodies.

FACTUAL HISTORY

On July 23, 2014 appellant, then a 63-year-old tax examining technician, filed a traumatic injury claim (Form CA-1) alleging that he missed two steps and fell while walking down a stairwell during a tornado drill on April 7, 2014. He did not stop work. In an undated statement, appellant related that he fell near the bottom of the stairwell onto a concrete landing, hitting his left knee and left side causing serious pain. He indicated that he was helped up by a co-worker and they proceeded to the shelter area where he sat until the drill was over, before returning to his desk. Appellant noted that he then visited an employing establishment nurse who took his blood pressure, gave him pain medication, and advised him to see a doctor.

B.S., an employing establishment team leader, filed an incident report on April 7, 2014. She noted that appellant twisted his left knee when he missed the last two steps in a stairwell at the employing establishment while participating in a shelter-in-place drill.

In an April 14, 2014 statement, D.J., a coworker, noted that appellant fell onto the concrete landing in front of him on April 7, 2014, landing sharply on his left knee. D.J. related that he helped appellant up and that they continued down the stairs until they reached the shelter area where appellant sat down. He advised that he reported the incident to his supervisors. L.H., a coworker, noted on April 17, 2014 that she saw appellant fall on April 7, 2014, hitting his left knee, and that D.J. helped him.

An employing establishment nurse provided a report dated April 7, 2014. The nurse reported appellant's history that he fell forward, landing on both hands and both knees, and complained of bilateral knee pain. Examination demonstrated no abrasions, swelling, or bruising, and appellant was ambulating with no difficulty. The nurse provided cold packs and medication and recommended that appellant see a doctor.

Dr. Emmanuel Onuzuruike, a chiropractor, provided treatment notes dated April 11 to June 12, 2014. He described the April 7, 2014 fall and appellant's complaints of neck, bilateral upper extremity, back, hip, and lower extremity pain. Appellant underwent chiropractic treatment three times weekly during this period.

X-rays completed on April 18, 2014 demonstrated tricompartment osteoarthritis of the left knee, mild osteoarthritis of the left hip, mild osteoarthritis of bilateral hips on pelvis x-ray, degenerative intervertebral disc and facet processes at the L3-4, L4-5, and L5-S1 levels of the lumbar spine, S-shaped scoliotic curvature of the upper/mid thoracic spine with minimal thoracic

endplate spondylosis, significant degenerative changes at C1-2, and multilevel facet osteoarthritis of the cervical spine.

On January 29, 2015 appellant notified OWCP that he needed continued treatment and would like a formal decision in his case.

By letter dated February 10, 2015, OWCP informed appellant that, as his injury appeared minor with no lost time from work and because the employing establishment did not controvert the claim, it had not formally considered the merits of his claim. It informed him that the claim had been reopened for formal adjudication and advised him of the evidence needed in support.

Appellant thereafter submitted a February 27, 2015 plane x-ray of the right shoulder that demonstrated moderate-to-severe acromioclavicular joint osteoarthritis and a probable loose body in the posterior joint space. In a March 9, 2015 report, Dr. Kenny Morohunfola, a Board-certified internist, noted that he was appellant's primary care physician who examined him on February 27 and March 4, 2015. He described a history that appellant fell down steps during a tornado drill on April 4, 2014 injuring his right shoulder, but did not feel severe pains until two weeks later. Dr. Morohunfola reported tenderness to palpation of the right shoulder with grossly limited range of motion and noted his review of the right shoulder x-ray study. He indicated that, based on his examination, appellant's diagnoses were right shoulder pains, right shoulder osteoarthritis, and right shoulder loose body. Dr. Morohunfola opined, "It is quite possible that the fall at work caused or aggravated [appellant's] right shoulder pains," and requested that treatment be authorized.

By decision dated March 25, 2015, OWCP found that the April 7, 2014 incident occurred as alleged, but denied the claim, finding the evidence of record insufficient to establish a medical condition causally related to the established work incident. OWCP noted that the reports from Dr. Onuzuruike, a chiropractor, were not probative as he did not diagnose a subluxation by x-ray. OWCP further found Dr. Morohunfola's opinion speculative and insufficient to establish causal relationship.

Appellant, through counsel, timely requested a hearing with OWCP's Branch of Hearings and Review. At the hearing, held on November 18, 2015, he testified that when he fell on April 7, 2014, his whole body hurt and that he had injured his left knee and right shoulder. Appellant described treatment by Dr. Onuzuruike. He also noted other treating physicians, but did not provide reports from them. Counsel argued that Dr. Morohunfola's opinion was sufficient to establish causal relationship.

By decision dated February 1, 2016, an OWCP hearing representative affirmed the March 25, 2015 decision.

On July 21, 2016 appellant, through counsel, requested reconsideration and submitted a May 20, 2016 report in which Dr. Morohunfola advised that "the fall at work caused or aggravated [appellant's] right shoulder pains." He requested authorization for therapy.

In a merit decision dated September 22, 2016, OWCP denied modification of the prior decisions. It discussed Dr. Morohunfola's May 2, 2016 report, noting his diagnoses of right shoulder pain, right shoulder osteoarthritis, and right shoulder loose bodies. OWCP found his

report insufficient to establish causal relationship, noting that pain was a symptom not a diagnosed condition, and that the physician did not provide a rationalized discussion explaining the nature of his diagnosis and employment factors.

LEGAL PRECEDENT

An employee seeking compensation under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,⁴ including that he or she is an “employee” within the meaning of FECA and that he or she filed a claim within the applicable time limitation.⁵ The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that disability from work, if any, was causally related to the 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. 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 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.⁷

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁹ 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 causal relationship.¹⁰

Under section 8101(2) of FECA, the term “physician” includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.¹¹ Implementing regulations indicate that the diagnosis of spinal subluxation

³ *Supra* note 2.

⁴ *J.P.*, 59 ECAB 178 (2007).

⁵ *R.C.*, 59 ECAB 427 (2008).

⁶ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *T.H.*, 59 ECAB 388 (2008).

⁸ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁰ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹¹ 5 U.S.C. § 8102(2); *see D.S.*, Docket No. 09-860 (issued November 2, 2009).

must appear in the chiropractor's report, and a chiropractor may interpret his or her x-rays to the same extent as any other physician.¹²

ANALYSIS

There is no dispute that appellant missed two steps and fell in a stairwell during a tornado drill at work on April 7, 2014. The Board, however, finds that the medical evidence submitted is insufficient to establish an injury causally related to the April 7, 2014 employment incident.

Appellant initially claimed that he injured his left knee when he fell on April 7, 2014. At the hearing, he also claimed a right shoulder injury. The Board finds that there is no probative medical evidence of record that discusses the cause of any knee condition.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically-sound explanation of how the claimed work event caused or aggravated the claimed condition.¹³ No physician did so in this case.

The April 18, 2014 left knee x-ray and February 27, 2015 x-ray of the right shoulder did not provide a cause of any diagnosed conditions. 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.¹⁴

As to Dr. Onuzuruike's reports, as noted, in assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under section 8101(2) of FECA. A chiropractor is not considered a physician under FECA unless it is established that he or she diagnosed a spinal subluxation as demonstrated by x-ray.¹⁵ The evidence in this case does not reflect that Dr. Onuzuruike diagnosed subluxation based on the results of an x-ray. Dr. Onuzuruike's reports therefore have no probative value.¹⁶

Moreover, the record does not contain rationalized or bridging medical opinion explaining how the right shoulder injury was caused by the April 7, 2014 employment incident.¹⁷ While appellant testified at the hearing that he was treated by other physicians, the record contains no reports from other physicians.

In a March 9, 2015 report, Dr. Morohunfola noted that he first examined appellant on February 27, 2015. He described a history that appellant fell down some steps during a tornado drill on April 4, 2014, injuring his right shoulder. Dr. Morohunfola described right shoulder

¹² 20 C.F.R. § 10.311(b), (c).

¹³ *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

¹⁴ *Willie M. Miller*, 53 ECAB 697 (2002).

¹⁵ *Supra* note 12.

¹⁶ *See J.G.*, Docket No. 15-1468 (issued October 7, 2015).

¹⁷ *See generally Mary A. Ceglia*, 55 ECAB 626 (2004).

examination findings of tenderness to palpation and grossly limited range of motion, and noted his review of the right shoulder x-ray study. He, however, merely diagnosed right shoulder pain and couched his opinion regarding causal relationship in speculative terms, indicating that it was quite possible that the fall at work caused or aggravated his right shoulder condition. While he advised on May 20, 2016 that the fall at work caused or aggravated appellant's right shoulder pains, Dr. Morohunfola offered no explanation as to why he changed his opinion or provided any explanation of how the fall on April 7, 2014 caused appellant's diagnosis of right shoulder pains 10 months later on February 27, 2015.

While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.¹⁸ Dr. Morohunfola's opinion is of insufficient rationale to establish a right shoulder injury causally related to the April 7, 2014 fall at work.¹⁹

As to the assertions on appeal that the September 22, 2016 decision is deficient because it ignored medical reports that established appellant's right shoulder condition, the Board notes that in both that decision and the decision of OWCP's hearing representative dated February 1, 2016 specifically discussed Dr. Morohunfola's opinion and the x-ray findings.

It is appellant's burden of proof to establish a diagnosed condition causally related to the accepted April 7, 2014 work incident. As none of the medical evidence of record provides the necessary rationale explaining how and why the accepted April 7, 2014 work incident resulted in a diagnosed right shoulder condition, it is insufficient to establish an injury caused by this incident. Thus, the Board finds that appellant has failed to 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(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 causally related to an April 7, 2014 employment incident.

¹⁸ *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁹ *Dennis M. Mascarenas*, *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the September 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 10, 2017
Washington, DC

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

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

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