

On appeal counsel contends that the claim was a simple one and should be accepted.

FACTUAL HISTORY

On May 13, 2014 appellant, then a 64-year-old laborer custodian, filed a traumatic injury claim (Form CA-1) alleging that on April 24, 2014 he sustained a sprained right elbow moving a cabinet in the performance of duty. He noted, "After the cabinet was unbolted from the wall I loaded it on a heavy duty hand truck and was easing it down the incline from room 34 to room M112 while my coworker held the door open. I felt the load shift off of the hand truck and reflexively attempted to stop its movement with my right hand/arm. The cabinet toppled over and fell on the floor. This is when I believe I incurred the injury to my right elbow/arm."

Appellant submitted a narrative statement describing the events of April 24, 2014 and noted that he was experiencing symptoms of chronic obstructive pulmonary disease (COPD). He described a manager closing down rooms where the maintenance staff stored tools and personal belongings. This room closure resulted in the need to remove the supply cabinets and personal belongings from the rooms. Appellant loaded a cabinet on a heavy duty hand truck and began easing it down an incline. When the load began to shift, he tried to stop it with his right hand. The cabinet toppled to the floor. Appellant used leave due to his COPD and his right arm pain became pronounced with swelling. A coworker witnessed the locker falling and appellant trying to stop it.

Dr. Jeffrey R. Levenson, an infectious disease specialist, examined appellant on May 20, 2014 and diagnosed right elbow tendinitis and muscle tear. On the form report, he checked a box marked "Yes" to indicate that appellant's condition was work related and recommended modified-duty work.

On May 24, 2014 Dr. Richard Herrick, a Board-certified orthopedic surgeon, reported that appellant presented with swelling and sharp right elbow pain. He noted, "The onset was sudden without injury and began on April 26, 2014." Dr. Herrick reported, "The joint injury occurred when [appellant] tried to catch something while he was pulling it on a hand truck and he caught it with his right arm." He diagnosed olecranon bursitis, partial triceps tendon tearing, and mild strains of the medial ulnar collateral and radial collateral ligaments.

The employing establishment provided appellant with an authorization for examination or treatment (Form CA-16).³

Appellant provided a series of reports completed by Erin N. Gwyn, a nurse practitioner, as well as notes from Irma Witbreuk, an occupational therapist.

On July 2, 2014 appellant began filing claims for wage-loss compensation (Form CA-7) for the period June 28 through July 25, 2014.

³ In a telephone memorandum dated July 16, 2014, an OWCP claims examiner informed appellant that his Form CA-16 covered his medical expenses up to 60 days from the date of issuance.

In a July 11, 2014 letter, OWCP informed appellant that when his claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. As such, it administratively approved a limited amount of medical expenses without considering the merits of the claim. OWCP reopened appellant's claim as he had requested wage-loss compensation. It requested that he provide additional factual and medical evidence in support of his traumatic injury claim and afforded him 30 days for a response.

In a note dated June 19, 2014, Dr. Herrick repeated the history that the onset of appellant's right elbow condition was sudden, without injury, on April 26, 2014 while at work. He diagnosed right olecranon bursitis, right ulnar collateral ligament sprain, and sprain of the right ulnohumeral ligament.

Dr. Herrick completed a narrative report on July 28, 2014 and noted that appellant experienced significant right elbow pain and swelling that started around April 26, 2014, which "simply occurred while [appellant] was doing his work." He diagnosed olecranon bursitis. A magnetic resonance imaging (MRI) scan on May 12, 2014 demonstrated extensive partial tearing along the triceps tendon as well as mild medial and radial collateral ligament strain. Dr. Herrick opined that olecranon bursitis and lateral collateral ligament strain of the elbow were frequently degenerative changes either caused by or increased by overuse of the elbow.

By decision dated August 22, 2014, OWCP denied appellant's traumatic injury claim finding that he had not established that the employment incident occurred as alleged. It noted conflicting histories of injury documented in the reports of Dr. Herrick and appellant's claim form. OWCP further found that appellant had not submitted any medical evidence to establish that a diagnosed medical condition was causally related to the work injury or event.

On September 3, 2014 counsel requested an oral hearing from OWCP's Branch of Hearings and Review. In a January 26, 2015 report, Dr. Herrick explained that on May 2, 2014 appellant indicated that his right elbow pain and swelling began on April 26, 2014 without injury. He noted that on May 23, 2014 appellant reported that the elbow injury occurred when he tried to catch something while he was pulling it on a hand truck and caught it with his right arm. Appellant asserted that he initially forgot about the incident. Dr. Herrick provided his findings on examination of olecranon bursitis and possible sprain as well as the May 12, 2014 MRI scan findings on olecranon bursitis, extensive partial tearing along the triceps tendon as well as radial collateral, and ulnar collateral ligament strain. Appellant's January 12, 2015 MRI scan demonstrated persistent partial tearing of the insertion of the triceps tendon with improvement of the collateral ligament injuries and resolution of the olecranon bursitis. Dr. Herrick diagnosed partial tearing with chronic tendinosis or tendinitis of the right triceps tendon. He determined, "In my medical opinion, considering all the facts of the injury, I believe that the persistent partial tearing of the triceps tendon, and the tendinitis/tendinosis are, indeed, directly related to the injury that occurred on the job; and the only one of which I have any knowledge." Dr. Herrick added, "There may be other causes for this problem; however, in this particular case I believe [that] the present diagnosis is related to the injury initially described by [appellant] as approximately on April 26, 2014. At the very minimum, he certainly had a problem that was materially aggravated by the conditions of his employment, as I understand them."

Appellant testified at the oral hearing before an OWCP hearing representative on February 26, 2015. He explained the reasons for the various descriptions of the cause of injury which he provided to Dr. Herrick.

By decision dated May 12, 2015, OWCP's hearing representative found that, based on the witness' statement, appellant had established that the employment incident of the falling locker occurred as alleged on April 26, 2014. However, he further found that Dr. Herrick's January 26, 2015 report contained contradictions regarding whether appellant's diagnosed conditions were directly related to the April 26, 2014 work incident or was aggravated by employment conditions. The hearing representative concluded that, as Dr. Herrick's opinion was contradictory, it was insufficient to establish that appellant's medical condition was caused by the accepted traumatic incident of the falling cabinet, and that appellant had thus not met his burden of proof.

Counsel requested reconsideration on June 8, 2015 and submitted additional medical reports. In a December 10, 2014 note, Dr. Michael J. Smith, a Board-certified orthopedic surgeon, examined appellant due to right shoulder pain and loss of motion. He reported that the onset of the right shoulder condition was sudden and that it occurred at work on April 24, 2014 while appellant was trying to pull a heavy object, which began to fall. Appellant injured his arm while trying to recover the falling object. Dr. Smith reviewed a December 5, 2014 shoulder MRI scan which revealed a partial thickness tear of the supraspinatus tendon and infraspinatus tendon. Dr. Smith diagnosed right shoulder impingement syndrome and right rotator cuff syndrome. He recommended surgery. On June 1, 2015 Dr. Smith repeated his history of injury. He examined appellant's right shoulder and found a positive impingement sign, loss of motion, as well as weakness in the rotator cuff musculature. Dr. Smith diagnosed right shoulder rotator cuff tear. He opined, "Causal relationship is that this injury is directly related to the workers' compensation injury described above."

By decision dated July 16, 2015, OWCP denied modification of its prior decision. It found that Dr. Smith's reports were insufficient to establish causal relationship as his opinion was not well reasoned and was not based on a complete factual background.

Counsel requested reconsideration on June 23, 2016 and submitted evidence from Dr. Herrick. On December 9, 2015 Dr. Herrick reported that appellant had right elbow pain since April 24, 2014 when he was pulling a heavy hand truck with a locker on it, and the locker started to slide off. Appellant reached with his right arm to stabilize the load and "injured his arm then." Dr. Herrick diagnosed partial tear of the triceps insertion area and noted that appellant had continuing shoulder problems. He opined that appellant's triceps injury was primarily caused by the April 24, 2014 incident. Dr. Herrick noted that there was no evidence that any other injury occurred, and no evidence that appellant had any previous elbow condition.

By decision dated December 19, 2016, OWCP denied modification of its prior decisions. It found that Dr. Herrick's reports lacked sufficient medical reasoning to establish appellant's traumatic injury claims.

LEGAL PRECEDENT

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

OWCP defines 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, place of occurrence, and member or function of the body affected.”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. 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 required to establish causal relationship is rationalized medical evidence.⁹ 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.¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury causally related to the accepted employment incident.

⁴ *R.C.*, 59 ECAB 427 (2008).

⁵ *Id.*, *Elaine Pendleton*, 40 ECAB 1142, 1145 (1989).

⁶ 20 C.F.R. § 10.5(ee).

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *J.Z.*, 58 ECAB 529 (2007).

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Appellant filed a Form CA-1 alleging that he injured his right elbow on April 24, 2014 when he attempted to catch a locker which was falling from a hand truck. The employing establishment provided him with a Form CA-16 authorization for medical treatment.¹² OWCP accepted that the April 24, 2014 work incident occurred as alleged. It denied the claim because the medical evidence of record did not establish a causal relationship between appellant's claimed right arm conditions and the accepted April 24, 2014 employment incident. The Board finds that he failed to meet his burden of proof to establish a work injury causally related to the April 24, 2014 employment incident.

Dr. Herrick submitted a series of reports diagnosing olecranon bursitis, extensive partial tearing along the triceps tendon, as well as mild medial and radial collateral ligament strain. He initially opined on July 28, 2014 that olecranon bursitis and lateral collateral ligament strain of the elbow were frequently degenerative changes either caused by or increased by overuse of the elbow. This opinion is not supportive of appellant's traumatic injury claim as Dr. Herrick suggests that appellant's work activities during a period longer than one workday or one work shift resulted in the diagnosed conditions, or an occupational disease.¹³ Appellant alleged that his condition was causally related to a single incident on April 24, 2014. If he believes that his employment duties aggravated his condition over a period of days of shifts, this could be an occupational disease.¹⁴ Furthermore, Dr. Herrick offered no medical reasoning to address how and why appellant's regular work duties would result in the diagnosed conditions. A mere conclusion without the necessary rationale explaining how and why he believes that work activities resulted in a diagnosed condition is insufficient to meet appellant's burden of proof.¹⁵

On January 26, 2015 Dr. Herrick opined that appellant's diagnosed right elbow conditions were "directly related to the injury that occurred on the job." He noted that there may be other causes for this problem, but he believed that the diagnoses were related to the April 26, 2014 injury. Dr. Herrick also suggested that appellant had a problem that was "materially aggravated by the conditions of his employment." On December 9, 2015 he reported that appellant had right elbow pain since April 24, 2014. Dr. Herrick opined that appellant's tricep injury was primarily caused by the April 24, 2014 incident. He noted that there was no evidence of any other injury and no evidence that appellant had any previous elbow condition. Causal relationship must be based on rationalized medical opinion evidence. Dr. Herrick refers to two different dates of injury April 24 and 26, 2014. A physician must accurately describe appellant's employment incident and medically explain the pathophysiologic process by which

¹² When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

¹³ *D.S.*, Docket No. 15-0606 (issued July 2, 2015).

¹⁴ *D.R.*, Docket No. 16-0528 (issued August 24, 2016).

¹⁵ *Id.*; *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

this incident would have caused or aggravated his condition.¹⁶ The Board has held that the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between a claimed condition and an employment event.¹⁷ Dr. Herrick failed to provide medical reasoning in support of any of his various conclusions regarding the relationship between appellant's right arm conditions and the April 24, 2014 work incident.

Beginning in December 2014, Dr. Smith diagnosed right shoulder impingement syndrome and right rotator cuff syndrome. He attributed these conditions to the April 24, 2014 work incident of trying to pull a heavy object, which began to fall. Dr. Smith opined that appellant's shoulder conditions were directly related to his "workers' compensation injury." These reports addressed additional conditions not previously claimed by appellant. Dr. Smith did not provide any bridging evidence explaining how the additional conditions claimed in December 2014 were related to the April 24, 2014 employment incident.¹⁸ Furthermore, he did not provide any medical explanation in support of his opinion on the causal relationship between appellant's newly alleged and diagnosed right shoulder condition and his employment incident.¹⁹

Appellant also provided a May 20, 2014 form report from Dr. Levenson, which diagnosed right elbow tendinitis and muscle tear. Dr. Levenson indicated by checking a box marked "yes" that appellant's condition was work related. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.²⁰

The Board finds that appellant's traumatic injury claim must be denied as he failed to establish a causal relationship between the accepted employment incident and his diagnosed medical conditions. None of the physicians provided a rationalized opinion establishing a causal relationship between his employment incident on April 24, 2014 and his diagnosed conditions. The Board has long held that 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.²¹

Appellant provided reports from a nurse practitioner and an occupational therapist. Healthcare providers such as nurses, nurse practitioners, acupuncturists, physician assistants, and physical or occupational therapists are not considered physicians under FECA and their reports

¹⁶ *G.G.*, Docket No. 15-0234 (issued April 9, 2015).

¹⁷ *N.L.*, Docket No. 17-0454 (issued April 6, 2017).

¹⁸ *Adolph C. Bowman*, Docket No. 00-2815 (issued July 5, 2001).

¹⁹ *Supra* note 14.

²⁰ *B.M.*, Docket No. 17-0324 (issued March 24, 2017); *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

²¹ *Willie M. Miller*, 53 ECAB 697 (2002).

and opinions do not constitute competent medical evidence to establish a medical condition, disability, or causal relationship.²²

As noted above, the Board rejects counsel's contentions on appeal and finds that the medical evidence of record lacks the necessary medical rationale to meet appellant's burden of proof to establish a traumatic injury resulting in right upper extremity conditions.

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 traumatic injury causally related to the accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 19, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

²² 5 U.S.C. § 8101(2); *see also* *G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989).