

FACTUAL HISTORY

On July 23, 2016 appellant, then a 47-year-old maintenance worker, filed a recurrence of disability claim (Form CA-2a), alleging that on June 21, 2016, while reaching and turning his back to replace a light, he felt a sharp pull in his lower left back. He asserted that this injury was causally related to an April 17, 2014 earlier injury under OWCP File No. xxxxxx616.³ Appellant stopped work on June 22, 2016. On August 4, 2016 OWCP advised that his claim would be developed as a new traumatic injury because he alleged a new back injury while replacing a light.

Appellant submitted a June 21, 2016 report from Dr. Perry F. Shuman, a Board-certified orthopedist, in which he reported treating appellant for a flare-up of low back and left leg. Dr. Shuman noted appellant's history was significant for spondylosis with radicular symptoms down the left leg. Appellant reported lifting something on June 14, 2016 and feeling a persistent pull and tug in his back. He did not feel that he could work and requested a disability slip. Dr. Shuman noted findings of positive straight leg raises on the left and intact motor strength in the bilateral lower extremities. He diagnosed intervertebral disc disorders with radiculopathy in the lumbar region and flare-up of spondylosis with radiculopathy of the left lower extremity. Dr. Shuman recommended physical therapy. He advised that appellant was totally disabled. In a July 25, 2016 report, Dr. Shuman noted that appellant presented with lower lumbar spine pain radiating to his left leg with associated numbness and tingling. He diagnosed intervertebral disc disorders with radiculopathy in the lumbar region and low back pain. Dr. Shuman reiterated that appellant was totally disabled from work. He advised that appellant walked without ambulatory aids, could dress himself, and found him 75 percent disabled. He recommended physical therapy. On October 17, 2016 Dr. Shuman noted a magnetic resonance imaging (MRI) scan of the lumbar spine revealed multilevel bulging discs. Appellant reported that his left leg had been giving out on him and he had fallen. Dr. Shuman diagnosed intervertebral disc disorders with radiculopathy in the lumbar region and multilevel bulging discs of the lumbosacral spine. He recommended physical therapy and an electromyogram. Dr. Shuman opined that appellant remained totally disabled from work and 75 percent disabled overall.

In an October 17, 2016 disability certificate, appellant was found to be totally disabled from work.

An MRI scan of the lumbar spine dated November 11, 2016 revealed minimal central canal stenosis at L2-3, L3-4 secondary to disc bulge, ligamentous and facet hypertrophy, mild central canal stenosis at L4-5 secondary to disc bulge and diffuse disc bulge, and small disc extrusion at L5-S1 level with minimal compression of the thecal sac and left S1 nerve.

Appellant submitted claims for wage-loss compensation (Form CA-7), for leave without pay for total disability for the period June 22 to December 7, 2016.

By letter dated December 15, 2016, OWCP advised appellant that his claim originally appeared to be a minor injury which resulted in minimal or no time loss from work. It indicated that his claim was administratively handled to allow limited medical payments, but the merits of

³ OWCP File No. xxxxxx616 is not presently before the Board.

the claim had not been formally adjudicated. OWCP advised that the claim would be formally adjudicated. It requested that he submit additional information, including a comprehensive medical report from his treating physician to include a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed injury.

Appellant submitted additional claims for compensation (Form CA-7) for the periods December 8 to 24, 2016 and December 25, 2016 to January 7, 2017.

In a January 27, 2017 decision, OWCP denied appellant's claim for compensation because the medical evidence of record was insufficient to establish a medical condition causally related to the accepted work incident.

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 filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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.⁵

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.⁶

ANALYSIS

OWCP accepted that on June 21, 2016 appellant was reaching and turning his back to replace a light at work. The evidence supports that he was diagnosed with intervertebral disc disorders with radiculopathy in the lumbar region, spondylosis with radiculopathy, and multilevel bulging discs of the lumbosacral spine. However, the Board finds that appellant has

⁴ *Gary J. Watling*, 52 ECAB 357 (2001).

⁵ *T.H.*, 59 ECAB 388 (2008).

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

failed to submit sufficient medical evidence to establish that his diagnosed medical condition is causally related to the June 21, 2016 employment incident.

Appellant submitted a June 21, 2016 report from Dr. Shuman who treated appellant for a flare-up of low back and left leg pain. He reported lifting something on June 14, 2016 and feeling a persistent pull and tug in his back and did not feel that he could work. Dr. Shuman diagnosed intervertebral disc disorders with radiculopathy in the lumbar region and flare-up of the spondylosis with radiculopathy of the left lower extremity. He indicated that appellant had a new injury and was totally disabled. However, he is merely repeating the history of injury as reported by appellant without providing his own opinion regarding whether his condition was work related.⁷ To the extent that he is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's diagnosed conditions and the accepted work incident.⁸

In his July 25, 2016 report, Dr. Shuman treated appellant for lower lumbar spine pain radiating to his left leg with associated numbness and tingling. He diagnosed intervertebral disc disorders with radiculopathy in the lumbar region and low back pain. Dr. Shuman indicated that appellant was totally disabled from work. Similarly, on October 17, 2016, he noted that an MRI scan revealed multilevel bulging discs. Dr. Shuman diagnosed intervertebral disc disorders with radiculopathy in the lumbar region and multilevel bulging discs of the lumbosacral spine. He opined that appellant remained totally disabled from work. Dr. Shuman's notes are insufficient to establish the claim as he did not provide a history of injury⁹ or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.¹⁰

The October 17, 2016 disability certificate finding appellant totally disabled is not signed by a physician. Medical documents not signed by a physician and lacking proper identification do not constitute probative medical evidence.¹¹

The remainder of the medical evidence is of limited probative value as it fails to provide a physician's opinion on the causal relationship between appellant's work incident and his

⁷ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

⁸ *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁹ *Supra* note 7.

¹⁰ *A.D.*, 58 ECAB 149 (2006); Docket No. 06-1183 (issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹¹ *See R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568(1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in FECA). *See also* 5 U.S.C. § 8101(2) (defines the term physician as used in FECA).

diagnosed intervertebral disc disorders with radiculopathy in the lumbar region, spondylosis with radiculopathy of the left lower extremity and multilevel bulging discs of the lumbosacral spine.¹²

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.¹³ Appellant failed to submit such evidence and therefore he has not met his burden of proof.

On appeal appellant asserts that he submitted sufficient evidence to establish that he was injured on the job. However, the medical evidence does not establish that his diagnosed medical conditions are causally related to his accepted work incident. Appellant has not submitted a physician's report which describes how the incident on June 21, 2016 caused or aggravated a back injury.¹⁴ He argues that he was approved for disability retirement and Social Security Disability Benefits based on the same medical documents submitted to OWCP. The Board has held that entitlement to benefits under another act does not establish entitlement to benefits under FECA.¹⁵ The Board has noted that there are different standards for medical proof on the question of disability under FECA and under the Social Security Act.¹⁶

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 failed to meet his burden of proof to establish that his low back injury was causally related to the accepted June 21, 2016 employment incident.

¹² See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (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 *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁴ The Board notes that OWCP's decision inadvertently indicated that appellant had prior back surgery. This is harmless error as the medical evidence, as explained, does not sufficiently explain how work activities on June 21, 2016 caused or aggravated appellant's diagnosed conditions.

¹⁵ *Freddie Mosley*, 54 ECAB 255 (2002); Docket No. 02-1915 (issued December 19, 2002).

¹⁶ *Daniel Deparini*, 44 ECAB 657 (1993).

ORDER

IT IS HEREBY ORDERED THAT the January 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2017
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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