

ISSUE

The issue is whether appellant has established an injury causally related to the accepted June 3, 2016 employment incident.

FACTUAL HISTORY

On June 24, 2016 appellant, then a 33-year-old motor vehicle operator, filed a claim for a traumatic injury (Form CA-1). He indicated that, on June 3, 2016, he sustained injuries while in the performance of duty when a stolen vehicle swerved across an intersection and hit him while he was standing on a curb. A June 3, 2016 City of Cleveland Traffic Crash Report verified that appellant was hit by a stolen vehicle. He was standing on the north curb of Wade Park Avenue, next to Unit 01, a marked police vehicle, at the time of the incident and was knocked to the ground when the stolen vehicle hit him. Appellant did not indicate on the claim form that he had stopped work.

In a development letter dated June 30, 2016, OWCP requested that appellant provide additional factual and medical evidence in support of his claim. Appellant was afforded 30 days to submit the requested information.

In a June 3, 2016 emergency room triage report, Bryon Harrell, a physician assistant directed by Dr. Horwitz,³ reported that appellant was standing next to a car when the car bumped him and he fell to the ground. Appellant was struck on his right arm and chest area and knocked to the ground. He complained of right arm and right chest pain. X-rays of the right elbow, ribs, and right shoulder were reported as negative for fractures or dislocation. A diagnosis of right arm pain, musculoskeletal and chest wall contusion were provided. Copies of diagnostic testing and emergency department notes were provided.

In a June 3, 2016 Ohio Bureau of Workers' Compensation First Report of an Injury, Occupational Disease or Death, Mr. Harrell noted the history of injury and diagnosed arm pain, musculoskeletal, right and chest wall contusion.

In a June 29, 2016 note, a physician note from University Hospital, indicated that appellant was under medical care from June 6 to July 18, 2016 and could return to work on July 18, 2016 with restrictions.

In a July 8, 2016 attending physician's report (Form CA-20), Dr. Robert J. Gillespie, a Board-certified orthopedic surgeon, reported a June 3, 2016 history of injury of appellant being hit by a car while on the job. A diagnosis of acromioclavicular (AC) joint separation and superior labrum anterior to posterior (SLAP) tear was provided. Dr. Gillespie indicated that appellant could resume light-duty work on July 15, 2016 with restrictions for the right upper extremity. In a July 8,

³ The June 7, 2016 medical report noted that medical care was directed by Dr. Horwitz, whose credentials are not of record. The attestation portion of the report indicated that this was a shared visit and appellant was seen and evaluated by both the physician assistant and the physician.

2016 work restriction note, he released appellant to modified duty with restrictions on July 15, 2016.

By decision dated August 11, 2016, OWCP denied appellant's claim as the evidence submitted was insufficient to establish that the medical conditions diagnosed were causally related to the June 3, 2016 work incident of being struck by the driver in the stolen vehicle. Specifically, it found that there was no medical report signed by a physician which clearly diagnosed a medical condition specific to the right or left side of the body in connection with the accepted work incident.

On August 18, 2016 OWCP received appellant's August 17, 2016 request for reconsideration. In an August 17, 2016 statement, appellant clarified that on June 3, 2016 he was talking to police officers concerning an earlier accident when a stolen vehicle struck the police vehicle, then struck him and a coworker before hitting a tree.

In a July 8, 2016 report, Dr. Gillespie stated that appellant saw him for a right shoulder injury he suffered at work. He reported that appellant was assessing injury to another employee and another car, when he was hit by a car that ran into him. Dr. Gillespie stated that appellant had a normal shoulder prior to that incident and his current right shoulder symptoms were directly and causally related to his work-related injury. He diagnosed a superior glenoid labrum lesion of the right shoulder.

By decision dated October 19, 2016, OWCP denied modification of its prior decision. It found that the medical evidence submitted failed to explain how and why the diagnosed conditions of chest contusion, AC joint separation, and SLAP tear were caused by or related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁶

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁷ There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he

⁴ *Supra* note 2.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *See S.P.*, 59 ECAB 184, 188 (2007).

actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹ The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 claimant.¹⁰

ANALYSIS

OWCP accepted that the June 3, 2016 work incident occurred as alleged. The issue is whether appellant's diagnosed conditions resulted from the June 3, 2016 employment incident. The Board finds, however, that he did not meet his burden of proof to establish causal relationship between the conditions for which compensation is claimed and the accepted employment incident.

On June 3, 2016 the date of the accepted employment incident, appellant went to the emergency department and was diagnosed with a chest wall contusion and right arm pain.¹¹ The provider treating appellant was identified as Mr. Harrell, a physician assistant. The Board has held that document notes signed by a physician assistant lack probative value as medical evidence as physician assistants are not considered physicians under FECA.¹² While the report noted that appellant was seen and evaluated by the physician assistant and Dr. Horwitz, who directed his care, the report did not reflect that it was reviewed or countersigned by the physician. Under FECA, the reports of nonphysicians, which includes physician assistants, do not constitute probative medical evidence unless countersigned by a physician.¹³ As there is no evidence that Bryon Harrell's report was countersigned by a physician, the report does not constitute medical evidence. Thus, this report is insufficient to establish appellant's claim.

Likewise, the June 3, 2016 Ohio Bureau of Workers' Compensation First Report of an Injury, Occupational Disease or Death, in which Mr. Harrell diagnosed arm pain, right

⁸ *Julie B. Hawkins*, 38 ECAB 393 (1987).

⁹ *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000).

¹¹ The Board has held that the general diagnoses of pain or spasm do not constitute a firm medical diagnoses, but rather descriptions of symptoms. *See J.S.*, Docket No. 07-0881 (issued August 1, 2007); *Robert Broome*, 55 ECAB 339 (2004).

¹² *See David P. Sawchuk*, 57 ECAB 316, 320, n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

¹³ *Lyle E. Dayberry*, 49 ECAB 369, 372 (1998) (regarding physician assistants).

musculoskeletal pain, and chest wall contusion, also does not constitute probative medical evidence as it is not countersigned by a physician.¹⁴

In a July 8, 2016 attending physician's report, Dr. Gillespie reported a June 3, 2016 history of injury of appellant being hit by a car while in the performance of duty. While he diagnosed an acromioclavicular (AC) joint separation and SLAP tear for the right upper extremity, he failed to provide a rationalized opinion explaining how the June 3, 2016 employment incident of being struck by a car caused or aggravated his right shoulder conditions. Dr. Gillespie noted that appellant was hit by a car 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.¹⁵ His opinion is of limited probative value as it does not contain any medical rationale explaining how the employment incident would have physiologically caused the diagnosed conditions.¹⁶ Medical opinions which contain no supporting rationale are of little probative value.¹⁷ Thus, this report is insufficient to establish appellant's claim.

In another July 8, 2016 report, Dr. Gillespie diagnosed a superior glenoid labrum lesion of right shoulder from the right shoulder injury appellant had suffered while at work. He opined that appellant's current right shoulder symptoms were directly and causally related to his work-related injury as appellant had a normal shoulder prior to the work incident. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.¹⁸ Dr. Gillespie failed to provide sufficient medical rationale explaining how appellant's current right shoulder condition was caused or aggravated by the June 3, 2016 work incident.¹⁹ Therefore, his report is insufficient to establish appellant's claim.

Other medical evidence of record, including work restriction notes and the diagnostic testing of record, are of limited probative value as they do not specifically address whether appellant's conditions are attributable to his accepted work incident.²⁰ Thus, this evidence is insufficient to meet appellant's burden of proof.

¹⁴ *Id.*

¹⁵ See *G.O.*, Docket No. 16-0311 (issued June 14, 2016); *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

¹⁶ See *A.D.*, Docket No. 17-1136 (issued November 9, 2017).

¹⁷ *F.T.*, Docket No. 09-0919 (issued December 7, 2009) (medical opinions not fortified by rationale are of diminished probative value); *Sedi L. Graham*, 57 ECAB 494 (2006) (medical form reports and narrative statements merely asserting causal relationship generally do not discharge a claimant's burden of proof).

¹⁸ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁹ *Supra* note 14.

²⁰ 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). See also *K.E.*, Docket No. 17-1216 (issued February 22, 2018).

Causal relationship is a medical question that must be established by probative medical opinion from a physician.²¹ In this case, the Board finds that none of the medical evidence appellant submitted constitutes rationalized medical evidence sufficient to establish causal relationship between the work incident and his diagnosed conditions.²² Accordingly, the Board finds that appellant failed to meet his burden of proof.

On appeal counsel contends that OWCP's decision is contrary to fact and law. Based on the findings and reasons stated above, the Board finds that counsel's arguments are not substantiated. The Board finds that OWCP properly evaluated the evidence of record in its obligations to properly adjudicate appellant's claim. As appellant has not submitted sufficiently rationalized medical evidence to support his allegation that he sustained an injury causally related to the June 3, 2016 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 established an injury causally related to the accepted June 3, 2016 employment incident.

²¹ *W.W.*, Docket No. 09-1619 (issued June 2010); *David Apgar*, 57 ECAB 137 (2005).

²² *See T.C.*, Docket No. 16-0586 (issued August 9, 2016); *Patricia J. Bolleter*, 40 ECAB 373 (1988).

ORDER

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

Issued: April 13, 2018
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