

FACTUAL HISTORY

On October 26, 2016 appellant, then a 56-year-old air craft mechanic, filed a traumatic injury claim (Form CA-1), alleging that on March 12, 2013, while washing an aircraft in the hangar area, he slipped and fell on the wet floor injuring his neck and back. His supervisor advised that appellant was injured in the performance of duty.³ Appellant did not stop work.

A cervical spine magnetic resonance imaging (MRI) scan dated October 22, 2013 revealed C6-7 right foraminal disc protrusion causing severe right foraminal stenosis, C3-4 broad-based central disc protrusion with bilateral unciniate process spurs resulting in severe bilateral foraminal stenosis, mild central canal stenosis, and minimal ventral cord deformation.

Appellant was treated by Dr. David Hannallah, a Board-certified orthopedist, on October 23, 2013 for worsening neck pain radiating into his right shoulder, trapezial region, and arm. Dr. Hannallah noted findings of a normal gait, no shoulder impingement, no midline cervical tenderness, some paraspinal tenderness, symmetric strength, and intact range of motion. He diagnosed stenosis of the spinal cervical region, worsening right upper extremity pain, and paresthasias from a C6-7 herniated disc causing foraminal stenosis. Dr. Hannallah indicated that the axial pain was in part due to degenerative disc disease and may not be completely alleviated with surgery. In a note dated August 18, 2014, he saw appellant for neck pain. Dr. Hannallah diagnosed spinal stenosis in the cervical region and brachial neuritis. Appellant also underwent physical therapy.

By development letter dated November 3, 2016, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that he submit a physician's reasoned opinion addressing the relationship between his claimed condition and specific employment factors.

Appellant subsequently submitted a Form CA-1 dated March 14, 2013 which noted that on March 12, 2013 he was washing an aircraft and slipped and fell on the wet floor injuring his neck and back. A witness statement by D.A. indicated that he saw appellant washing an aircraft and fall on his back. The Form CA-1 was signed by appellant's supervisor, D.D., on March 14, 2013. Supervisor D.D. noted that appellant was injured in the performance of duty.

In a statement dated November 22, 2016, appellant indicated that he filed a Form CA-1 on March 13, 2013 after he slipped and fell on March 12, 2013 while washing an aircraft. He continued to work, but that evening he had pain with little ability to move his neck. The next day appellant filed the Form CA-1 with his supervisor. He reported numbness and loss of strength in his right arm. Appellant indicated that he had prior treatment for right carpal tunnel syndrome. He was treated by Dr. Hannallah who diagnosed spinal stenosis from C2 to C7. Appellant indicated that his symptoms progressed including loss of feeling in right arm, neck, and shoulder area. He noted that he could no longer work as an aircraft mechanic after 36 years of service because of his condition. Appellant reported participating in physical therapy.

³ Appellant previously filed a Form CA-1 for this incident on March 14, 2013. The Form CA-1 was signed by appellant's supervisor on March 14, 2013 who noted that appellant was in the performance of duty. The employing establishment did not forward this claim to OWCP until after appellant filed his October 26, 2016 Form CA-1.

In a December 2, 2016 decision, OWCP denied appellant's claim for compensation because the medical evidence of record was insufficient to establish that he sustained an injury or medical condition causally related to the accepted work incident.

In an appeal request form dated December 31, 2016 and postmarked January 5, 2017, appellant requested a telephonic oral hearing before an OWCP hearing representative.

In a decision dated February 10, 2017, OWCP denied appellant's request for an oral hearing. It found that his request was untimely filed. Appellant was informed that his case had been considered in relation to the issues involved and that the request was further denied as it could equally be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered.⁴

On March 21, 2017 appellant requested reconsideration. He submitted an MRI scan of the cervical spine dated February 17, 2017, which revealed significant interval enlargement of a left uncovertebral/foraminal disc-osteophyte complex at C6-7, severe left foraminal narrowing, abutment of the left C7 nerve root, right uncovertebral/foraminal disc-osteophyte complex evident at C6-7, severe right foraminal narrowing, abutment of the right C1 nerve root, stable mild central narrowing at C3-4 related to a broad-based disc-osteophyte complex, severe bilateral foraminal narrowing at C3-4, discogenic change, and facet arthropathy.

Appellant submitted an undated surgery scheduling sheet for an anterior discectomy and fusion at C6-7 prepared by Dr. Hannallah. He was diagnosed with cervical spinal stenosis.

Appellant submitted a report from Dr. Joseph Winchell, a Board-certified family practitioner, dated March 20, 2017, who noted that appellant initially presented in September 2013 with neck pain which had begun three weeks prior. He was referred to an orthopedic surgeon and was later diagnosed with cervical radiculopathy. Dr. Winchell opined that appellant's "medical condition is as least likely as not related to his military service based upon review of his Service Treatment records." He indicated that the fall at work could have caused radiculopathy and the symptoms may not have presented for several months.

In an April 24, 2017 decision, OWCP denied modification of a December 2, 2016 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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 are causally related to

⁴ Appellant has not appealed this decision.

⁵ *Supra* note 2.

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.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 or she 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

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.⁸

ANALYSIS

It is undisputed that on March 12, 2013 appellant was working as an aircraft mechanic, and while washing an aircraft in the hangar area, he slipped on the wet floor and fell and injured his neck and back. However, the Board finds that he failed to submit sufficient medical evidence to establish that his diagnosed medical condition is causally related to the March 12, 2013 employment incident.

Appellant submitted a note from Dr. Hannallah on October 23, 2013 in which he treated him for worsening neck pain radiating into his right shoulder, trapezial region, and arm. Dr. Hannallah noted findings of paraspinal tenderness and diagnosed stenosis of the spinal cervical region, worsening right upper extremity pain, and paresthesias from a C6-7 herniated disc causing foraminal stenosis. He opined that the axial pain was probably due to degenerative disc disease. Similarly, on August 18, 2014 Dr. Hannallah treated appellant for neck pain and diagnosed spinal stenosis in the cervical region and brachial neuritis. An undated surgery scheduling sheet from Dr. Hannallah diagnosed spinal stenosis of the cervical region and recommended an anterior discectomy and fusion at C6-7. Dr. Hannallah's medical opinion is insufficient to establish the claim as he did not provide a history of injury⁹ or specifically address whether appellant's employment incident was sufficient to have caused or aggravated a diagnosed medical condition.¹⁰

⁶ *Gary J. Watling*, 52 ECAB 357 (2001).

⁷ *T.H.*, 59 ECAB 388 (2008).

⁸ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *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).

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).

Appellant submitted a March 20, 2017 report from Dr. Winchell who noted that appellant presented in September 2013 with neck pain. Dr. Winchell opined that appellant's medical condition was as least likely as not related to his military service based up review of his service treatment records. He indicated that the fall at work "could have" caused radiculopathy and the symptoms may not have presented for several months. The Board notes that Dr. Winchell's report provides some support for causal relationship, but is insufficient to establish the claimed conditions are causally related to his employment duties. Dr. Winchell's report, at best, provides speculative support for causal relationship as he noted that appellant's cervical radiculopathy was as least likely as not related to his military service and the fall at work could have caused radiculopathy.¹¹ He provided no medical reasoning explaining how the particular workplace conditions caused or aggravated the diagnosed conditions.

The record also contains records regarding appellant's physical therapy. The Board has held that notes signed by a physical therapist are not considered medical evidence as they are not physicians under FECA.¹² Thus, these treatment records are of no probative medical value in establishing appellant's claim.

The remainder of the medical evidence including MRI scans of the cervical spine are of limited probative value as they fail to provide a physician's opinion on a causal relationship between appellant's work incident and his diagnosed cervical condition.¹³ For this reason, this evidence is insufficient to meet his burden of proof.

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.¹⁴ Appellant failed to submit such evidence and therefore he has not met his burden of proof.

On appeal appellant contends that his original injury was on March 12, 2013 and he continued to work and his condition has worsened. He noted that he could no longer work as an aircraft mechanic after 36 years of service. As found above, the medical evidence of record does not establish a diagnosed medical condition causally related to the accepted work incident. Appellant has not submitted a physician's report which sufficiently describes how the March 12, 2013 incident caused or aggravated his diagnosed medical conditions.

¹¹ See *D.D.*, 57 ECAB 734 (2006) (medical opinions that are speculative or equivocal in character are of diminished probative value).

¹² See *David P. Sawchuk*, 57 ECAB 316, 320n.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). See also *K.F.*, Docket No. 17-1125 (issued January 11, 2018) (physical therapists are not considered physicians as defined under FECA).

¹³ 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).

¹⁴ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

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 neck and back injuries were causally related to the accepted March 12, 2013 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 24, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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