

upright after bending over to retrieve a tool from his tool box. The employing establishment indicated that it had notice of the claimed injury on April 9, 2014.

In support of his claim, appellant submitted medical records from Southern New Hampshire Medical Center, Foundation Neurology, and St. Joseph Hospital-Family dated May 16 through June 12, 2014 which were unsigned, bore an illegible signature, or were signed by a physician assistant. These records indicated that appellant did not have a heart condition. Appellant was diagnosed as having seizure disorder-memory loss and pneumonia and sleep deprivation.

The employing establishment controverted appellant's claim in a July 23, 2014 letter, contending that fact of injury and causal relationship had not been established.

OWCP received a patient care report dated April 17, 2014 signed by two attendants from American Medical Response New Hampshire who noted that on April 14, 2014 appellant was transported from his home following a domestic incident to Southern New Hampshire Medical Center with complaints of anxiety and stress. The attendants indicated that appellant's condition was behavioral/psychiatric suicidal.

Medical records dated May 8, 2015 from Monadnock Community Hospital indicated that appellant was involved in a motor vehicle accident on that day and that he had transient global amnesia due to seizure, motor vehicle collision with possible concussion and cervical strain, and medication noncompliance. In addition, it was reported that he had a known seizure disorder.

OWCP, in a September 13, 2016 development letter, advised appellant that when his claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work and, since the employing establishment did not controvert continuation of pay or challenge the case, a limited amount of medical expenses were administratively approved and paid. It noted that it had reopened the claim because the medical bills had exceeded \$1,500.00. OWCP requested that appellant submit additional factual and medical evidence within 30 days.

OWCP's September 13, 2016 development letter was returned as undeliverable. The employing establishment subsequently advised OWCP of appellant's current address and, on October 24, 2016, OWCP resent the development letter to his new address. The October 24, 2016 development letter was also returned as undeliverable. The employing establishment verified appellant's most recent address, and, on December 22, 2016, OWCP resent the development letter to this address.

By letter dated January 12, 2017, appellant requested additional time to respond to OWCP's December 22, 2016 development letter.

OWCP, in a January 18, 2017 decision, denied appellant's traumatic injury as the evidence of record failed to establish that the April 9, 2014 incident occurred as alleged or that appellant sustained a medical condition caused by the alleged work incident.

In a January 23, 2017 e-mail, appellant again attributed his head injury to his claimed April 9, 2014 employment injury. He noted that he did not lose time from work. Appellant asserted that when he returned to work on the day following his claimed injury he noted that

someone had covered the I-beam with foam and tape so that no one else would get hurt. He could not explain the delay in filing his Form CA-1, but maintained that he notified a supervisor about his injury at the time of injury. Appellant questioned why a supervisor did not call an ambulance for him. He related that two weeks after his claimed injury, he was treated at a hospital because he lost his vision in both eyes and was unaware of his surroundings. Appellant asserted that he had suffered memory loss since the accident and had, among other problems, seizures. He had one seizure that resulted in a car accident in which he totaled his car. Appellant submitted unclear pictures allegedly taken at the time of his claimed work-related head injury.

On January 27, 2017 appellant responded to OWCP's December 22, 2016 development questionnaire. He contended that he sustained a dime-sized hole on the top of his head as a result of the claimed work incident. Appellant reiterated that he notified a supervisor on duty at the time of injury. He noted that although he was in pain, he did not seek medical assistance at that time. Appellant claimed that on the day following his injury he experienced loss of memory and vision in his eyes as well as dizziness. He stated that he could not submit witness statements because he no longer worked at the location where his injury occurred. Appellant claimed that he had no similar disability or symptoms prior to his injury. He submitted e-mails dated April 19 to June 13 2014 between the employing establishment and himself regarding his therapy sessions, medical conditions, and other treatment.

Appellant also submitted a series of reports noting the treatment of his various medical conditions before and after the April 9, 2014 employment incident. In a May 15, 2014 report, Dr. Robert Quirbach, a Board-certified family practitioner, noted appellant's history which included complex partial seizure, mild cognitive impairment, hypertension, vitamin B12 deficiency, and old left hemisphere lacunar stroke. He also noted that appellant presented with confusion. Dr. Quirbach reviewed his systems in addition to laboratory and diagnostic test results. He reported findings on physical examination and provided primary diagnoses of transient global amnesia likely secondary to seizure, medication noncompliance, and possible pneumonia. Dr. Quirbach reported secondary diagnoses of hypertension and seizure disorder. A May 16, 2014 discharge summary provided instructions regarding appellant's diagnosed conditions. In reports dated October 6, 2014 and April 15 and May 22, 2015, Dr. Quirbach noted appellant's complaint of memory problems. He examined him and provided an impression of memory loss, vascular dementia, partial seizure disorder, Crohn's disease, and depression.

In a May 24, 2014 report, Dr. Colin O'Brien, Board-certified in emergency medicine, indicated that appellant had a history of hypertension, mood disorder, and seizure disorder. Appellant reported that two days ago he became essentially blind in both eyes for 20 minutes at work. He also had sharp chest pain. Appellant reported that his supervisor was aware of his symptoms, but no one elected to call paramedics. His symptoms resolved and on the following day at work he was disoriented and did not recall who he was, where he was, or what he was supposed to be doing. Appellant's symptoms resolved after 20 minutes. He related that he did not have any symptoms on the date of his examination. Dr. O'Brien noted his medical and social history. He provided a review of systems and discussed findings on examination. Dr. O'Brien assessed transient blindness and confusion and atypical chest pain.

In a May 27, 2014 report, Dr. Tatiana Nabioullina, a Board-certified psychiatrist and neurologist, noted that appellant was seen at Dr. Quirbach's request. She noted that he reported not having a seizure since July 27, 2013 and that he had difficulty with short-term memory. Dr. Nabioullina noted appellant's history and described findings on physical and neurological examination. She provided an impression of transient ischemic attack, unspecified, seizure disorder, and memory loss. Dr. Nabioullina examined appellant on June 20, 2014 and noted a history of two episodes of confusion in May 2014. Appellant reported that he had a loss of vision and dysarthria for about 15 minutes during the first episode. He related that he did not know where he was for 15 minutes during the second episode. Appellant had a similar event on the night before his examination. He did not know his location or remember his friend's name. After 20 minutes appellant felt normal. Dr. Nabioullina reviewed appellant's history, discussed findings, and reiterated her prior impression of seizure disorder.

On August 22, 2015 Dr. Craig H. Lauer, a Board-certified family practitioner, noted that appellant had a seizure while mowing the grass. He had known seizure disorder. Dr. Lauer provided a review of systems and findings on examination. He noted an impression of known seizure disorder. Dr. Lauer advised that appellant had no apparent injuries. He related that this was his second seizure this year.

In a November 11, 2015 hospital discharge summary, Dr. Carla Fortique, a family practitioner, noted appellant's diagnoses which included seizure disorder. She related that, according to him, he was involved in a motor vehicle accident and he presumed to have a seizure. Appellant attributed the seizure to walking into and hitting his head against a steel beam. OWCP also received evidence from a licensed practical nurse and reports of diagnostic testing.²

On January 30, 2017 appellant requested a review of the written record by an OWCP hearing representative regarding the January 18, 2017 decision.

By decision dated May 18, 2017, an OWCP hearing representative affirmed the January 18, 2017 decision as modified. She accepted that the April 9, 2014 employment incident occurred as alleged, but denied appellant's claim finding that the medical evidence of record was insufficient to establish a head 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 by the weight of the reliable, probative, and substantial evidence,³ including an injury in the performance of duty and that any specific condition or

² A May 15, 2014 magnetic resonance angiogram of the neck was negative. A June 25, 2014 chest x-ray showed bilateral bronchiectasis and patchy increased markings seen in both upper lobes and in the right lower lobe which may represent infiltrates. Other infectious or inflammatory etiology and underlying malignancy could not be excluded.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

disability for work for which compensation is claimed is causally related to that employment injury.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.⁵ 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.⁶

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁷ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁸ The belief of the claimant that a condition was caused or aggravated by the employment incident is insufficient to establish causal relationship.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained a traumatic injury caused or aggravated by the accepted April 9, 2014 employment incident. Appellant failed to submit sufficient medical evidence to establish a condition related to head trauma that was causally related to the accepted employment incident.

In support of his claim, appellant submitted a series of reports from various physicians. Dr. Quirbach examined appellant on May 15, 2014 and reported primary diagnoses of transient global amnesia likely secondary to seizure, medication noncompliance, and possible pneumonia. He further reported secondary diagnoses of hypertension and seizure disorder. Dr. Quirbach repeated his diagnoses in a discharge summary dated May 16, 2014. In his reports dated October 6, 2014 and April 15 and May 22, 2015, he discussed examination findings and provided an impression of memory loss, vascular dementia, partial seizure disorder, Crohn's disease, and depression. The Board finds that Dr. Quirbach's reports are insufficient to meet appellant's burden of proof as he failed to offer a medical opinion on whether appellant's diagnosed conditions were caused or aggravated by the accepted April 9, 2014 employment

⁴ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁶ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁷ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁸ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

incident. Medical evidence which does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰

Similarly, the reports from Drs. Nabioullina, O'Brien, Lauer, and Fortique as well as reports of diagnostic testing are of limited probative value. The physicians addressed appellant's medical conditions, but failed to provide an opinion addressing whether the diagnosed conditions were caused or aggravated by the accepted work incident.¹¹ Dr. Fortique reported that appellant felt that appellant's seizure was caused by walking into and hitting his head against a steel beam. An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.¹² Dr. Fortique merely repeated the history of injury reported by appellant without providing her own rationalized opinion regarding the causal relationship between the accepted April 9, 2014 employment incident and his diagnosed seizure disorder.¹³ For these reasons, the Board finds that the physicians' reports are insufficient to establish appellant's burden of proof.

Appellant submitted medical reports of a licensed practical nurse. However, evidence from a licensed practical nurse is of no probative medical value on the issue of causal relationship as a practical nurse is not considered a physician as defined under FECA.¹⁴

The Board finds that appellant has failed to submit any rationalized, probative medical evidence sufficient to establish that he sustained a head injury causally related to the April 9, 2014 employment incident. Appellant therefore did not meet his burden of proof.

On appeal appellant contends that he sustained a work-related head injury. For the reasons set forth above, the Board finds that the weight of the medical evidence failed to establish a head condition causally related to the accepted April 9, 2014 employment incident.

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.

¹⁰ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (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 *Id.*

¹² *R.W.*, Docket No. 15-0345 (issued September 20, 2016); *Robert A. Boyle*, 54 ECAB 381 (2003).

¹³ *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).

¹⁴ 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *E.B.*, Docket No. 17-1862 (a nurse is not considered a physician under FECA).

CONCLUSION

The Board finds that appellant failed to submit sufficient medical evidence to establish a condition related to head trauma that was causally related to the accepted April 9, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 18 and January 18, 2017 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 9, 2018
Washington, DC

Christopher J. Godfrey, 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