

**United States Department of Labor  
Employees' Compensation Appeals Board**

M.B., Appellant	)	
	)	
and	)	Docket No. 17-0780
	)	Issued: July 9, 2018
DEPARTMENT OF THE ARMY, AVIATION & MISSILE COMMAND, Corpus Christi, TX, Employer	)	
	)	

*Appearances:*  
Malinda A. Gaul, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On February 24, 2017 appellant, through counsel, filed a timely appeal from a January 26, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish head and right shoulder conditions causally related to the accepted June 6, 2016 employment incident.

## FACTUAL HISTORY

On June 13, 2016 appellant, a 67-year-old sheet metal mechanic, filed a traumatic injury claim (Form CA-1) alleging that he sustained head trauma and a right shoulder injury on June 6, 2016 as a result of a fall. He stopped work on the date of injury.

In support of his claim, appellant submitted hospital records dated June 6, 2016 indicating that he was found on the ground at work with bruising on the left side of his face and that he complained of left-sided facial pain and right shoulder pain. He stated that he saw flashes of light and then passed out. Dr. Carlyle Langhorn, a Board-certified emergency medicine physician, diagnosed episode of syncope and a facial contusion.

A magnetic resonance imaging (MRI) scan of the brain dated June 7, 2016 showed no acute intracranial pathology and a cervical spine MRI scan revealed multilevel diffuse disc bulges from C3-4 to T3-4 with no significant spinal canal stenosis.

Appellant submitted an echocardiogram dated June 7, 2016 that was normal and showed normal sinus rhythm.

In a June 7, 2016 report, Dr. Thomas Alexander, a Board-certified cardiologist, reviewed a transthoracic cardiographic study and found borderline normal left ventricular systolic function, severe left atrial enlargement, and no intramural thrombus velocity.

On June 9, 2016 Dr. Morgan S. Campbell, III, a Board-certified neurologist, reviewed an electroencephalogram and found that it was a normal study. No epileptiform activity was seen.

A magnetic resonance angiogram of the Circle of Willis dated June 10, 2016 was found to be unremarkable.

In a July 13, 2016 report, Dr. Thomas E. Martens, a family practitioner, diagnosed cervical radiculopathy, lumbar intervertebral disc disorders with radiculopathy, cervical disc disorder, right shoulder injury muscle/tendon of the rotator cuff, and unspecified injury of the head caused by a traumatic work-related injury. He reported that, on June 6, 2016, appellant was working when another mechanic told him that he could put his tools up because he needed help revising a blueprint. Appellant stated that it was very hot in the hangar where he was working. He remembered waking up lying on the ground of the hangar. Appellant stated that, before he hit the ground, he saw a flashing light. Dr. Martens reported that appellant had passed out and impacted his head, on the left side of his face, cervical region, and right shoulder as he hit the ground. Appellant indicated that he had passed out due to the heat of the hangar and was rushed to the local emergency room, which confirmed that he did lose consciousness at the time. Dr. Martens opined that appellant's conditions were causally related to the June 6, 2016 fall at work.

In an August 3, 2016 development letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In an August 8, 2016 letter, the employing establishment controverted appellant's claim contending that the medical evidence of record failed to establish a diagnosed condition causally related to the June 6, 2016 work incident.

Appellant submitted an August 9, 2016 narrative statement reiterating the factual history of his claim and a June 7, 2016 MRI scan of the right shoulder which demonstrated an almost complete full-thickness supraspinatus tendon tear with 1.7 centimeters (cm) retraction. He further submitted a July 2, 2016 chest x-ray revealing linear atelectasis, a July 3, 2016 computerized tomography scan of the head which showed no acute intracranial abnormality, and a July 3, 2016 MRI scan of the brain which demonstrated no acute intracranial pathology or evidence of acute ischemia.

By decision dated September 16, 2016, OWCP accepted that the June 6, 2016 employment incident occurred as alleged, but denied the claim because the medical evidence of record failed to establish causal relationship between appellant's diagnosed conditions and the June 6, 2016 employment incident.

On November 14, 2016 appellant requested reconsideration and submitted pay rate information, as well as earnings and leave statements. He also submitted an electromyography and nerve conduction velocity studies dated July 27, 2016 which showed a correlation for possible right C6 cervical radiculopathy and evidence of moderate right median sensorimotor neuropathy at the wrist.

In a report dated July 25, 2014, Dr. Helo Chen, a family practitioner, diagnosed cervical radiculopathy, lumbar intervertebral disc disorders with radiculopathy, cervical disc disorder, right shoulder unspecified injury of muscle/tendon, and head injury. He opined that appellant's conditions were causally related to his June 6, 2016 fall at work.

On October 10, 2016 Dr. Mario A. Martinez, a Board-certified internist, noted that appellant had been under his care since November 2012 and that appellant experienced a new onset of seizure disorder as of June 2016. He reported that appellant did not have a preexisting history of seizures.

By decision dated January 26, 2017, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>3</sup> 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,

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<sup>3</sup> *Id.*

including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>4</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury.<sup>6</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>7</sup>

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>9</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the employee's specific employment factor(s).<sup>10</sup>

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.<sup>11</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish causal relationship between the accepted June 6, 2016 employment incident and his diagnosed head and right shoulder conditions. OWCP accepted that the June 6, 2016 employment incident occurred as alleged and also accepted that there was a medical diagnosis in connection with the employment incident. However, it denied appellant's traumatic injury claim, finding that the medical evidence

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<sup>4</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989). *Id.*

<sup>7</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>8</sup> *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *Id.*

<sup>11</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

<sup>12</sup> *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006).

of record was insufficient to establish causal relationship between the diagnosed condition(s) and the accepted employment incident.

A June 7, 2016 MRI scan confirmed the diagnosis of a right shoulder almost complete full-thickness supraspinatus tendon tear, but the diagnostic study does not address the etiology of appellant's right shoulder condition. With respect to the other diagnostic reports of record, the Board notes that they are of limited probative value and are insufficient to establish the claim because they fail to specifically address whether his diagnosed conditions are causally related to the June 6, 2016 work incident.<sup>13</sup> Similarly, the reports from Drs. Alexander and Campbell merely review and interpret diagnostic studies, offering no medical diagnoses, or opinions as to causal relation. The Board has 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.<sup>14</sup> Consequently, the above-noted evidence is insufficient to meet appellant's burden of proof with respect to causal relationship.<sup>15</sup>

In his July 13, 2016 report, Dr. Martens diagnosed cervical radiculopathy, lumbar intervertebral disc disorders with radiculopathy, cervical disc disorder, right shoulder injury muscle/tendon of the rotator cuff, and unspecified injury of the head caused by a traumatic work-related injury. He reported that on June 6, 2016 appellant was working in a hot hangar when he fell. Appellant related that before he hit the ground he saw a flashing light. Dr. Martens reported that appellant had passed out and impacted his head, on the left side of his face, cervical region, and right shoulder as he hit the ground. He opined that appellant's conditions were causally related to the June 6, 2016 fall at work. However, the fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.<sup>16</sup> Temporal relationship alone will not suffice.<sup>17</sup> Dr. Martens' report did not include sufficient medical rationale explaining how the June 6, 2016 falling incident either caused or contributed to appellant's conditions. For these reasons, the Board finds that the evidence from Dr. Martens is insufficient to establish that appellant's diagnosed conditions are causally related to the June 6, 2016 work incident.

Dr. Chen diagnosed cervical radiculopathy, lumbar intervertebral disc disorders with radiculopathy, cervical disc disorder, right shoulder unspecified injury of muscle/tendon, and head injury. He opined that appellant's conditions were causally related to his fall at work on June 6, 2016. The Board finds that Dr. Chen failed to provide sufficient medical rationale explaining how falling at work on June 6, 2016 either caused or contributed to appellant's conditions. A physician's opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed conditions, and appellant's specific employment

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<sup>13</sup> 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).

<sup>14</sup> See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>15</sup> See *supra* notes 3 to 8.

<sup>16</sup> 20 C.F.R. § 10.115(e).

<sup>17</sup> See *D.I.*, 59 ECAB 158, 162 (2007).

factor(s).<sup>18</sup> Thus, the Board finds that Dr. Chen's report is insufficient to establish that appellant sustained an employment-related injury on June 6, 2016.

On June 6, 2016 Dr. Langhorn diagnosed episode of syncope and facial contusion and indicated that appellant was found on the ground at work that day. Nevertheless, the Board has 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.<sup>19</sup> Therefore, this evidence is insufficient to establish that appellant sustained an employment-related injury on June 6, 2016.

In his October 10, 2016 report, Dr. Martinez noted that appellant established care with him in November 2012 and then experienced a new onset of seizure disorder as of June 2016. He reported that appellant did not have a preexisting history of seizures. Dr. Martinez diagnosed seizure disorder, but the Board finds that his report is of limited probative value because it fails to address whether the accepted June 6, 2016 employment incident either caused or contributed to appellant's condition.<sup>20</sup> Thus, appellant has not met his burden of proof with this evidence.

As appellant has not submitted rationalized medical evidence sufficient to support his claim that he sustained head trauma and a right shoulder injury causally related to the June 6, 2016 employment incident, he has failed to meet his burden of proof.

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 head and right shoulder conditions causally related to the accepted June 6, 2016 employment incident.

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<sup>18</sup> *Supra* note 9.

<sup>19</sup> *See supra* note 14.

<sup>20</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 26, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2018  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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