

ISSUE

The issue is whether appellant has met his burden of proof to establish a left elbow condition causally related to the accepted April 3, 2014 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as presented in the prior Board decision are incorporated herein by reference. The relevant facts are as follows.

On April 9, 2014 appellant, then a 31-year-old staff pharmacist, filed a traumatic injury claim (Form CA-1) alleging that on April 3, 2014 he experienced numbness, tingling, a “pins and needles” sensation, and pain in his left elbow, radiating down to his hand and up to his shoulder when a pharmacy technician struck his left elbow with a medication cassette container while in the performance of his work duties.

In medical records dated May 5 through July 21, 2014, Dr. Barry G. Fisher, an attending orthopedic surgeon, noted a history that on April 3, 2014 appellant struck his left elbow which caused numbness and tingling. He reviewed diagnostic test results, reported findings on physical examination, and diagnosed the presence of left ulnar nerve pathology, most likely due to the direct injury in the left elbow area.

In a medical report dated July 16, 2014, Dr. Alissa J. Burge, a Board-certified radiologist, noted that a magnetic resonance imaging scan of appellant’s left elbow revealed mild tendinosis of the common extensor origin, edema in the biceps muscle which was nonspecific and may reflect muscle strain, and nonspecific subcutaneous edema over the posteromedial aspect of the elbow. No fracture was demonstrated.

In reports dated August 16, 27, and 29, 2014, appellant’s physical therapists and licensed acupuncturist noted appellant’s history of injury, discussed physical examination findings, and addressed the treatment of his left elbow.

By development letter dated September 19, 2014, OWCP indicated that when appellant’s claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment had not controverted the claim, payment of a limited amount of medical expenses was administratively approved. It stated that it had reopened the claim for consideration because the medical bills had exceeded \$1,500.00. OWCP informed appellant of the type of medical evidence necessary to establish his claim and afforded him 30 days to submit the necessary evidence.

In further reports dated September 3 to 22, 2014, appellant’s physical therapist addressed the treatment of appellant’s left elbow pain.

³ Docket No. 16-1180 (issued October 26, 2016); *petition for recon. denied*, Docket No. 16-1180 (issued May 25, 2017).

In a report with a partial date of October 6th, received by OWCP on October 10, 2014, Dr. Fisher discussed findings on examination of appellant's left elbow.

By decision dated October 23, 2014, OWCP denied appellant's traumatic injury claim. It accepted that the April 3, 2014 employment incident occurred as alleged, but denied his claim because the medical evidence of record did not contain a rationalized medical opinion relating his diagnosed left elbow conditions to the accepted work incident.

OWCP subsequently received an October 14, 2014 report of Dr. Itzhak C. Haimovic, a Board-certified neurologist. Dr. Haimovic related a history of the April 3, 2014 employment incident, noted his examination of appellant, and diagnosed left ulnar neuropathy, slight weakness in the left ulnar nerve, and possible cervical radiculopathy.

On October 12, 2015 appellant, through counsel, requested reconsideration of OWCP's October 23, 2014 decision. Counsel cited Board precedent and asserted that the evidence of record demonstrated that appellant sustained injuries and conditions causally related to the accepted April 3, 2014 employment incident. He submitted a report dated August 31, 2015 from Dr. Fisher, who diagnosed lateral epicondylitis with ulnar radiculopathy and opined that appellant's injury was a direct result of the April 3, 2014 employment incident.

In a report dated September 2, 2015, Dr. Charlene M. Scheim, a neurologist, diagnosed status post left elbow trauma with left ulnar traumatic mononeuropathy and found that appellant's injuries were causally related to the accepted April 3, 2014 employment-related incident. She concluded that he was permanently partially disabled as a result of his injuries.

By decision dated January 7, 2016, OWCP denied modification of its October 23, 2014 decision, finding that the medical evidence submitted did not contain a rationalized medical opinion explaining how the accepted April 3, 2014 employment incident caused or aggravated appellant's diagnosed left elbow conditions.

On May 11, 2016 appellant, through counsel, appealed to the Board. By decision dated October 26, 2016, the Board affirmed OWCP's January 7, 2016 decision, finding that appellant had not met his burden of proof to establish a left elbow condition causally related to the accepted April 3, 2014 employment incident.⁴

On October 19, 2017 appellant, through counsel, requested reconsideration with OWCP. Counsel again cited Board precedent and contended that the evidence of record established that appellant sustained injuries causally related to the accepted April 3, 2014 work incident. He asserted that an accompanying letter dated February 15, 2017 from Dr. Scheim provided a rationalized medical opinion explaining causal relationship between appellant's diagnosed conditions and the accepted employment incident.

In the February 15, 2017 letter, Dr. Scheim referenced her September 2, 2015 report and clarified that the direct trauma of a medication container striking appellant's left elbow where the ulnar nerve passed, caused direct injury to the ulnar nerve and thereby caused left ulnar traumatic

⁴ *Id.*

mononeuropathy. She again opined that his left elbow and left ulnar nerve injuries were causally related to the accepted April 3, 2014 employment incident. Dr. Scheim also reiterated her prior opinion that appellant was permanently partially disabled as a result of his injuries.

By decision dated January 17, 2018, OWCP reviewed the merits of appellant's claim, but denied modification of its January 7, 2016 decision. It found that Dr. Scheim's February 15, 2017 report was insufficient to establish the claim because she did not provide medical rationale explaining how the accepted April 3, 2014 employment incident caused his left elbow ulnar traumatic neuropathy.

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 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.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 This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁹

⁵ *Supra* note 2.

⁶ *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

⁷ *A.D.*, *id.*; *T.H.*, 59 ECAB 388 (2008).

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

⁹ *S.H.*, Docket No. 17-1660 (issued March 27, 2018); *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left elbow condition causally related to the accepted April 3, 2014 employment incident.

OWCP accepted that the April 3, 2014 employment incident occurred as alleged. The issue is whether appellant established that the incident caused a left elbow condition. By decision dated October 26, 2016, the Board affirmed OWCP's denial of his claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹⁰ The Board will therefore not review the evidence addressed in the prior appeal.

While Dr. Scheim, in a report dated February 15, 2017, clarified her September 2, 2015 opinion on causal relationship, noting that the direct trauma of a medication container striking appellant's left elbow where the ulnar nerve passed, caused direct injury to the ulnar nerve and thereby caused left ulnar traumatic mononeuropathy and permanent partial disability, she still did not sufficiently explain how the accepted April 3, 2014 employment incident caused or aggravated his left elbow condition and resultant disability.¹¹ Thus, the Board finds that Dr. Scheim's report is insufficient to establish appellant's claim.

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a left elbow condition causally related to the April 3, 2014 employment incident. Appellant therefore has not met his burden of proof.

On appeal, counsel cites Board precedent and contends that evidence and argument contained in appellant's request for reconsideration establishes that he sustained disabling injuries and conditions causally related to the April 3, 2014 employment incident. For the reasons stated above, the Board finds that the medical evidence of record is insufficient to establish his claim.

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 a left elbow condition causally related to the accepted April 3, 2014 employment incident.

¹⁰ See *E.L.*, 16-0635 (issued November 7, 2016); *R.L.*, Docket No. 15-1010 (issued July 21, 2015). See also *A.P.*, Docket No. 14-1228 (issued October 15, 2014).

¹¹ See *E.C.*, Docket No. 17-0902 (issued March 9, 2018) (medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof).

ORDER

IT IS HEREBY ORDERED THAT the January 17, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2019
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