

ISSUE

The issue is whether appellant has met his burden of proof to establish that his right arm and left leg conditions were causally related to the accepted August 29, 2017 employment incident.

FACTUAL HISTORY

On August 29, 2017 appellant, then a 52-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that, on that same date, while in the performance of duty, he was trying to turn a sidewinder to move pallets when he fell off the sidewinder. He reported that the fall caused him to twist his left leg and bruise his right arm. Appellant notified his supervisor, stopped work, and sought emergency medical treatment on the date of the incident.

On the alleged date of injury the employing establishment issued appellant a properly completed authorization for examination and/or treatment (Form CA-16), which indicated that he was authorized to seek medical treatment at Brookdale Medical Center. An August 29, 2017 Brookdale Emergency Department note documents appellant's treatment for contusion of the lower leg. Appellant was released to return to work on September 2, 2017.

In a September 6, 2017 duty status report (Form CA-17), a physician medical provider indicated that appellant was disabled and unable to resume work as a result of a left calf strain and contusion.⁴

By development letter dated September 20, 2017, OWCP notified appellant that his claim was initially administratively handled to allow medical payments, as it appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of his claim had not been formally considered and his claim had been reopened for consideration of the merits because he had not returned to work in a full-time capacity. OWCP informed appellant that the evidence of record was insufficient to establish his traumatic injury claim. It advised appellant of the medical and factual evidence needed and afforded 30 days to submit the additional evidence.

In a September 6, 2017 medical report, Dr. Todd Soifer, a Board-certified orthopedic surgeon, reported that appellant injured his left calf region while at work on August 29, 2017. He provided findings on physical examination and noted that an x-ray of the left leg revealed no fracture. Dr. Soifer diagnosed left calf contusion and left calf strain/derangement. He further recommended a walker and provided work restrictions.

In a September 20, 2017 addendum report, Dr. Soifer reported that appellant's Doppler lower extremity study of the left leg revealed "soleal DVT [deep vein thrombosis]." Appellant was referred to a vascular specialist for treatment.

In a September 28, 2017 medical report, Dr. Soifer reported that appellant's left calf condition had improved. Appellant also reported a right forearm injury from the employment incident which had yet to resolve. Dr. Soifer provided findings on physical examination and diagnosed right forearm strain. He further recommended a Doppler study of the upper extremities.

⁴ The physician's signature is illegible.

Dr. Soifer provided Form CA-17s dated September 25 and 28, 2017, which restricted appellant from returning to work due to a torn calf muscle.

By decision dated October 25, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that his diagnosed medical conditions were causally related to the accepted August 29, 2017 employment incident.

On November 16, 2017 appellant requested review of the written record by an OWCP hearing representative.

In a September 22, 2017 diagnostic report, Dr. Gary Gwertzman, a Board-certified vascular surgeon, reported that a lower limb venous duplex scan revealed left acute DVT of the mid soleal vein. In a September 28, 2018 upper limb venous duplex scan, he reported that the right arm revealed no evidence of upper extremity superficial phlebitis or DVT.

In an October 16, 2017 medical report, Dr. Scott Weiss, a Board-certified orthopedic surgeon, reported that appellant presented for evaluation of left leg pain after he fell at work on August 29, 2017. Appellant was using crutches and reported difficulty walking due to pain in the left calf. He noted that the left calf was initially black and blue and swollen, but had improved significantly since the injury. Dr. Weiss reported that appellant was unable to get a magnetic resonance imaging (MRI) scan because of his cochlear implants. He noted that appellant also scratched his right arm during his fall, which had resolved, other than some residual numbness on the right fifth finger. Dr. Weiss diagnosed pain in left knee, paresthesia of skin, strain of muscle/tendon of left lower leg, and sprain of medial collateral ligament of left knee. He also noted a diagnosis of left calf strain/partial tear of the medial gastrocnemius muscle. With respect to appellant's right arm, Dr. Weiss diagnosed right fifth finger paresthesias, which he opined could be a mild case of cubital tunnel syndrome.

In medical notes dated October 19 and November 16, 2017, Dr. Soifer noted appellant's treatment and progress for his left lower extremity conditions.

In a November 7, 2017 report, Dr. Soifer related that he first evaluated appellant on September 6, 2017 as a result of an August 29, 2017 employment injury when he hurt his left calf region. He reported that physical examination revealed moderate medial and lateral gastroc tenderness, as well as local swelling and medial and lateral ecchymosis. The diagnosis at that time was left calf strain derangement. While his condition had somewhat improved, appellant's September 20, 2017 evaluation revealed continued moderate medial gastroc tenderness. He was referred for a Doppler study of his leg which revealed a clot, causing him to seek treatment with Dr. Gwertzman for soleal DVT. Dr. Soifer reported that appellant's left calf continued to improve with just a trace of discomfort on the medial side and slight discomfort on the lateral side. He diagnosed medial calf strain and subsequent DVT. Dr. Soifer opined that, based on the history, there was a close relationship between the condition described and the employment incident. He concluded that appellant had been disabled from his employment since the time of his last visit, although his condition was improving.

In a March 20, 2018 narrative statement, appellant described the circumstances surrounding the August 29, 2017 employment incident.

By decision dated April 25, 2018, OWCP's hearing representative affirmed the October 25, 2017 decision, finding that the evidence of record was insufficient to establish that the diagnosed medical conditions were causally related to the accepted August 29, 2017 employment incident.

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, 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.⁶ 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.⁷

In order to determine whether an employee actually sustained an 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁸ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ 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. 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.¹⁰

⁵ *Supra* note 2.

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *J.P.*, Docket No. 18-1165 (issued January 15, 2019).

¹⁰ *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his left calf and right arm conditions were causally related to the accepted August 29, 2017 employment incident.¹¹

The record reflects that appellant sought immediate emergency medical treatment following the August 29, 2017 employment incident. While the Brookdale Hospital Emergency Department note documented treatment for a left lower leg contusion, this report lacked a history of injury and opinion regarding the cause of the diagnosed condition. As this medical report lacked both a proper history and a rationalized opinion regarding causal relationship, it is of limited probative value.¹²

Appellant also submitted medical and form reports dated September 6 to November 7, 2017 from Dr. Soifer, his attending physician. The Board finds that the opinion of Dr. Soifer is not well rationalized. While he provided a diagnosis of left medial calf strain and subsequent DVT, Dr. Soifer failed to provide a fully rationalized opinion that appellant's left lower extremity conditions were causally related to the accepted August 29, 2017 employment incident. He opined that, based on appellant's history, there was a close relationship between the condition described and the history of injury. The Board notes that Dr. Soifer did not definitively relate appellant's diagnosed medical conditions to the accepted August 29, 2017 employment incident. Dr. Soifer's opinion on causation is highly speculative and couched in equivocal terms. To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.¹³ Moreover, Dr. Soifer failed to provide a detailed history of the employment incident, only generally noting that appellant injured his left calf region at work on August 29, 2017. Without an understanding of the employment incident, any opinion on causal relationship is of limited probative value as the physician is unable to describe how the incident caused appellant's injury.¹⁴ Dr. Soifer's reports lack the specificity and detail needed to establish appellant's claim.¹⁵

Dr. Soifer further failed to establish a work-related right arm injury. While he provided a firm medical diagnosis of right forearm sprain, he did not provide an opinion on the cause of this condition. As such, Dr. Soifer's reports are of no probative value,¹⁶ and are thus insufficient to meet appellant's burden of proof.¹⁷

¹¹ See *Robert Broome*, 55 ECAB 339 (2004).

¹² See *Z.D.*, Docket No. 16-0934 (issued November 8, 2016).

¹³ See *Beverly R. Jones*, 55 ECAB 411 (2004).

¹⁴ See *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

¹⁵ *P.O.*, Docket No. 14-1675 (issued December 3, 2015); *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

¹⁶ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁷ See *Michael R. Shaffer*, 55 ECAB 339 (2004).

The Board finds that Dr. Weiss' October 16, 2017 report is also insufficient to establish appellant's traumatic injury claim. While Dr. Weiss provided a diagnosis of strain of muscle/tendon of left lower leg and sprain of medial collateral ligament of left knee, he failed to provide any opinion regarding the cause of appellant's conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁸

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Gwertzman's diagnostic reports of record dated September 22 and 28, 2017 simply interpret imaging studies. The Board has held that reports of diagnostic tests lack probative value as they do not provide an opinion on causal relationship between appellant's employment and a diagnosed condition.¹⁹ The Board finds, therefore, that this evidence is insufficient to establish appellant's claim.

The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.²⁰ Temporal relationship alone will not suffice. Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.²¹ In the instant case, the record lacks rationalized medical evidence establishing causal relationship between the August 29, 2017 employment incident and his diagnosed conditions.²² Thus, appellant has failed to meet his burden of proof.²³

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 right arm and left leg conditions were causally related to the accepted August 29, 2017 employment incident.

¹⁸ See *supra* note 16.

¹⁹ See *P.Y.*, Docket No. 18-1136 (issued January 7, 2019).

²⁰ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

²¹ *D.D.*, 57 ECAB 734 (2006).

²² See *J.S.*, Docket No. 17-0507 (issued August 11, 2017).

²³ The record contains a Form CA-16 signed by the employing establishment official on August 29, 2017 for treatment pertaining to the employment injury. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated April 25, 2018 is affirmed.

Issued: February 12, 2019
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