

ISSUE

The issue is whether appellant has met his burden of proof to establish back, bilateral lower extremity, and right elbow conditions causally related to the accepted March 7, 2018 employment incident.

FACTUAL HISTORY

On March 13, 2018 appellant, then a 47-year-old medical instrument technician, filed a traumatic injury claim (Form CA-1) alleging that on March 7, 2018 he experienced pain, loss of sensation, tingling, and numbness in his lower back and bilateral lower extremities, sharp pain, swelling, numbness, and tingling in his right ankle and right elbow while in the performance of duty when he twisted to brace himself from falling. He stopped work on the date of injury. On the reverse side of the claim form, the employing establishment controverted the claim, contending that appellant was not injured in the performance of duty.

In an April 10, 2018 development letter, OWCP advised appellant that when his claim was first submitted it appeared to be a minor injury that resulted in minimal or no lost time from work and it therefore had administratively approved payment of a limited amount of medical expenses. It explained that his claim was being reopened because he had not returned to work in a full-time capacity. OWCP advised appellant of the type of medical evidence needed to establish his claim and afforded him 30 days to submit the necessary evidence.

In a progress note dated March 7, 2018, Dr. Jimmy L. Peebles, Board-certified in emergency medicine, indicated that appellant was seen for a minor illness. He diagnosed right elbow and right ankle injury, and lumbar strain. Dr. Peebles recommended that appellant be excused from work or school from the date of his evaluation through March 10, 2018.

In a progress note dated March 11, 2018, Dr. Ibhaz Al Mheid, a Board-certified internist, provided a discharge diagnosis of lumbago. In a letter of even date, he recommended that appellant be excused from work due to his evaluation on that day. Dr. Mheid also placed appellant off work through March 14, 2018. In consult requests dated March 11, 2018, he requested physical therapy to treat appellant's lumbago with sciatica.

Dr. Madhava R. Koti, a Board-certified internist, in progress notes and letters dated March 19 and April 1, 2018, indicated that appellant had been having medical problems since March 7, 2018. He provided a discharge diagnosis of lower back pain with lumbar radiculopathy, rule out disc herniation, and contusion of the right elbow and ankle. In the March 19, 2018 letter, Dr. Koti advised that appellant was unable to work until April 2, 2018. In the April 1, 2018 letter, he advised that appellant should not work until April 20, 2018. Dr. Koti, in consult requests dated April 1 and 2, 2018, requested prosthetics for appellant's provisional diagnosis of unspecified injury of unspecified muscle(s) and tendon(s) at the lower leg level, unspecified leg, initial encounter, and a surgical consult regarding his provisional diagnosis of intervertebral disc disorders with radiculopathy.

OWCP also received a letter dated March 14, 2018 by Dr. Muhammad Abbasi, a Board-certified internist. Dr. Abbasi noted that he had evaluated appellant on March 13, 2018 primarily

for a back injury that occurred on March 7, 2018. He recommended that appellant not return to work until March 20, 2018.

By decision dated May 18, 2018, OWCP accepted that the March 7, 2018 employment incident occurred as alleged, but denied the claim finding that the medical evidence submitted did not establish a diagnosed medical condition causally related to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP thereafter received medical evidence from Dr. Joseph Martino, Jr., an attending Board-certified orthopedic surgeon. In a May 21, 2018 report, Dr. Martino discussed the history of the accepted March 7, 2018 employment incident and appellant's medical treatment. He reported findings on physical and x-ray examination. Dr. Martino provided impressions of lumbar sprain/strain with bilateral lower extremity radiculopathy, bladder and bowel incontinence possibly from the above diagnosis, right elbow contusion, sprain/strain, and right ankle sprain/strain. He opined, within a reasonable degree of medical certainty, that appellant's injuries were directly caused by the March 7, 2018 employment incident and his symptoms correlated with the mechanism of injury. Dr. Martino further opined that appellant was currently occupationally disabled until appropriate treatment was rendered. In an imaging order form dated May 21, 2018, he reiterated his diagnosis of lumbar sprain/strain with bowel condition. In a form dated May 22, 2018, Dr. Martino diagnosed lumbar disc herniation at L4-5 and severe right ankle and right elbow sprain/strain. In a May 22, 2018 report, he reiterated appellant's history of injury and discussed MRI scan findings. Dr. Martino diagnosed resolving disc herniation at L5-S1 with resolving symptoms attributable to appellant's bowel and bladder changes. Additionally, he diagnosed grade 3 ankle sprain of the lateral ankle ligament complex, but found no fracture. Dr. Martino also diagnosed an ulnar collateral ligament sprain of the right elbow.

On May 30, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review regarding the May 18, 2018 decision.

OWCP received additional reports from Dr. Martino. In a May 22, 2018 disability certificate, Dr. Martino noted that appellant could not work until his next visit and was restricted from driving. In a report dated June 18, 2018, he advised that appellant was not capable of working in any capacity at that time based on his radicular symptoms and chronic mid back and low back pain in the lumbar distribution, which was confirmed on examination. Dr. Martino noted that this was associated with coincident muscle spasms. In a disability certificate and a return appointment(s)/post visit form dated June 18, 2018, he noted that appellant was unable to work until his next visit on July 16, 2018. In reports dated August 20 and 21, 2018, Dr. Martino opined that appellant had sustained a left knee injury causally related to the accepted March 7, 2018 employment incident. He noted a history of injury that appellant fell and twisted his knee while trying to get out of bed during the weekend of August 11, 2018. Dr. Martino noted the medical treatment appellant received for his left knee injury and again found that appellant was unable to work and listed his physical restrictions. In an August 20, 2018 disability certificate, he advised that appellant was unable to work until his next visit.

A lumbar spine MRI scan report dated May 21, 2018 by Dr. Thomas E. Turek, a Board-certified diagnostic radiologist, provided impressions of mild degenerative spondylosis at L5-S1,

mild facet arthropathy at L1-2, L2-3, L3-4, and L4-5 disc space levels and no evidence of herniated disc, spinal stenosis, or neural foraminal stenosis; and degenerative spondylosis and narrowing of the disc with Modic changes related to stress response at the L5-S1 disc space level, a small broad-based central herniated disc protrusion in the midline indenting the thecal sac, no spinal stenosis, normal neural foramina, and facet arthropathy.

OWCP received x-ray reports dated March 7, 2018 by Dr. Eduardo J. Stincer, a Board-certified diagnostic radiologist. In a March 7, 2018 right elbow x-ray report, Dr. Stincer provided an impression of an intact right elbow with a large olecranon process bone spur. In a March 7, 2018 lumbar spine x-ray report, he provided an impression of chronic minimal degenerative changes of the lower lumbar spine centered at the L5-S1 level without superimposed acute compression fractures.

A March 7, 2018 right ankle x-ray report by Dr. Jayanth H. Keshavamurthy, a Board-certified diagnostic radiologist was also received. Dr. Keshavamurthy provided an impression of no acute fracture or osseous abnormality.

By decision dated January 29, 2019, an OWCP hearing representative affirmed OWCP's May 18, 2018 decision, as modified. She found that appellant had submitted sufficient medical evidence to establish diagnosed lumbar, bilateral lower extremity, right elbow, and right ankle medical conditions, but denied the claim because the evidence was insufficient to establish that the diagnosed conditions were causally related to the accepted March 7, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time limitation period of FECA,⁴ and that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ 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 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.⁷ There are two

³ *Id.*

⁴ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

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.⁸ The second component is whether the employment incident caused a personal injury.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.¹¹ 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 appellant's specific employment incident.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish back, bilateral lower extremity, and right elbow conditions causally related to the accepted March 7, 2018 employment incident.

In a report dated May 21, 2018, Dr. Martino noted a history of the accepted March 7, 2018 employment incident. He discussed examination findings and diagnostic test results. Dr. Martino provided impressions of lumbar sprain/strain with bilateral lower extremity radiculopathy, bladder and bowel incontinence possibly from the above diagnosis, right elbow contusion, sprain/strain, and right ankle sprain/strain. He opined, within a reasonable degree of medical certainty, that the diagnosed conditions were directly caused by the accepted March 7, 2018 work incident and found that appellant was totally disabled from work. Dr. Martino noted that appellant's symptoms correlated with the mechanism of injury.

The Board finds that the opinion on causal relationship by Dr. Martino are conclusory in nature. A mere conclusory opinion provided by a physician, without the necessary rationale explaining how and why the employment incident was sufficient to result in the diagnosed medical conditions, is insufficient to meet a claimant's burden of proof to establish a claim.¹³ Thus, the Board finds that Dr. Martino's report is insufficient to establish appellant's claim.

Similarly, Dr. Martino's August 20 and 21, 2018 reports, which found that appellant sustained a left knee injury on August 11, 2018 due to the accepted March 7, 2018 employment incident, continued to be totally disabled from work, and required physical restrictions also are

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *E.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *S.S.*, *supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *Id.*

¹³ *See B.C.*, Docket No. 18-1735 (issued April 23, 2019); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

deficient as these reports do not provide a firm diagnosis of a particular medical condition,¹⁴ or the necessary medical rationale to establish causal relationship.¹⁵

In his remaining reports, Dr. Martino reiterated the history of the accepted March 7, 2018 employment incident and his prior lumbar diagnosis and finding regarding appellant's disability for work. He also provided additional diagnoses of lumbar disc herniation at L4-5 with resolving symptoms attributable to appellant's bowel and bladder changes, grade 3 right ankle sprain of the lateral ankle ligament complex, and ulnar collateral ligament sprain of the right elbow. These additional reports do not contain a specific opinion as to the cause of the diagnosed conditions and resultant disability. 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.¹⁶ These reports therefore are insufficient to establish appellant's claim.

Likewise, the reports and progress notes from Drs. Peebles, Al Mheid, and Abbasi, which addressed appellant's right elbow, right ankle, and lumbar conditions, disability for work, physical restrictions, and medical treatment also are deficient as these reports and progress notes do not contain an opinion regarding causal relationship.¹⁷

Appellant also submitted diagnostic test reports dated March 7 and May 21, 2018 from Drs. Stincer, Keshavamurthy, and Turek and the laboratory report dated March 11, 2018. The Board has held that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁸ Such reports are therefore insufficient to establish appellant's claim.

As there is no well-reasoned medical opinion establishing appellant's claim for compensation the Board finds that he has not met his burden of proof.¹⁹

On appeal counsel contends that OWCP's January 29, 2019 decision is contrary to fact and law. For the reasons set forth above, the Board finds that appellant has not met 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 and 20 C.F.R. §§ 10.605 through 10.607.

¹⁴ See *M.J.*, Docket No. 18-1114 (issued February 5, 2019).

¹⁵ *B.C.*, *supra* note 13.

¹⁶ *Id.*; *A.L.*, Docket No. 18-1756 (issued April 15, 2019); *K.E.*, Docket No. 18-1357 (issued March 26, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

¹⁷ *Id.*

¹⁸ See *B.C.*, *supra* note 13; *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁹ *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish back, bilateral lower extremity, and right elbow conditions causally related to the accepted March 7, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board