

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted December 27, 2013 employment incident.

FACTUAL HISTORY

On December 31, 2013 appellant, then a 59-year-old telecommunications specialist, filed a traumatic injury claim (Form CA-1) alleging that on December 27, 2013 he injured his right shoulder, upper arm, forearm, hand, and neck while in the performance of duty. He explained that as he was loading 12 fifty-pound battery boxes onto a cart, he felt a slight pull in his right shoulder. As the day progressed the pain in his shoulder increased and radiated into his upper arm, forearm, and hand. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty.

January 10, 2014 hospital records indicated that appellant was seen in the emergency room by Dr. Yolanda Haywood, an emergency medicine specialist, for neck and arm pain. The records noted that appellant may have a slipped disc in his back, and that he should avoid lifting objects over five pounds until seen by an orthopedist. Dr. Haywood diagnosed acute neck pain provided with educational materials about back pain, neck pain, and herniated intervertebral discs and gave appellant a work release form indicating that prior to returning to work he should be cleared by an orthopedic surgeon. Appellant was advised to follow up with an orthopedist and prescribed pain medication.

Additional January 10, 2014 hospital records signed by Dr. Haywood and Dr. Rory Merritt, an emergency medicine specialist, indicated that appellant presented with neck pain that radiated to his right shoulder and down his right arm, which began on December 27, 2013 when he was lifting 50-pound boxes while at work and had a sudden onset of right arm pain. Appellant stated that he came to the hospital because his pain was not improving. He noted that his pain was worse with neck extension, which also caused tingling and numbness in his hands and decreased strength in his right arm. The records noted a history of low back sciatica. A physical examination revealed mild paraspinal tenderness upon palpation in the right lateral low cerebral spine and otherwise normal results.

January 20, 2014 notes by Dr. Charles Wilson, a family medicine and urology specialist, indicated that appellant pulled his shoulder on December 27, 2013 and planned to get a magnetic resonance imaging (MRI) scan. These notes were otherwise illegible.

Additional January 20, 2014 notes from Dr. Wilson stated that appellant was lifting 60-pound batteries for a couple of hours when he first noted pulling and then pain in his right neck, shoulder, and forearm. Appellant then noted weakness in his right forearm and shoulder muscles. He went to the emergency room and was given medication which helped with the pain, but he still had right arm weakness and he additionally experienced tingling in the index and middle fingers of his right hand and on the extensor surface of his right forearm and lateral aspect of his arm. Appellant reported diminished range of motion in his neck and neck pain when he looked up, turned his head from right to left, and lifted heavy objects. He additionally noted that when he abducted he heard a popping sound in his shoulder. Dr. Wilson conducted a physical examination of appellant which revealed tenderness in his medial scapular spine in his right shoulder and 10 to 20 degrees less abduction on his right side compared to his left. When his right arm was raised

above 90 degrees appellant experienced pain and there was a popping sound, which could be replicated with abduction and external rotation of appellant's right shoulder. Dr. Wilson diagnosed appellant with acute neck and shoulder pain with radiculopathy to the right arm and a herniated disc. He advised appellant on his treatment options, and appellant chose to get an MRI scan and noted that he already had an appointment with Dr. Paul Smucker, a physical medicine and rehabilitation specialist. Dr. Wilson noted that appellant should not return to work until after his appointment with Dr. Smucker.

A February 5, 2014 narrative medical report by Dr. Smucker indicated that appellant had previously had issues with his lower back, but that his cervical spine problem was a new issue. Dr. Smucker noted that appellant stated that while at work he was moving 50-pound boxes on December 27, 2013 and felt a pain in his neck which intensified after a few hours and radiated down his right arm. Appellant presented with pain which radiated down the outer aspect of his upper arm and crossed over his elbow to the ulnar aspect of his forearm in addition to pain and numbness in his thumb, first, and index fingers on his right hand. Dr. Smucker noted that appellant's pain interfered with his sleep and rendered him unable to perform many of his usual tasks due to a loss of strength in his right arm. Appellant's symptoms manifested when he turned his head to the left and looked upwards. He noted that he could not work, as he had difficulty working at a computer due to the cervical positioning required. Dr. Smucker conducted a physical examination which revealed weakness in appellant's right triceps, but otherwise normal results. He noted that he presumed appellant had acute cervical radiculopathy and recommended diagnostic imaging and work restrictions including avoiding prolonged static activity, lifting no more than five pounds, and physical therapy.

A February 5, 2014 work status form signed by Dr. Smucker indicated that appellant could return to work on February 5, 2014 with restrictions including no lifting over five pounds, limited typing and computer use, and an option to sit or stand.

A March 5, 2014 letter from appellant requested to change doctors.

A March 24, 2014 medical report by Dr. Corey Wallach, an orthopedic surgeon, indicated that appellant presented with pain in his neck and right arm from a December 27, 2013 injury which occurred while lifting 50-pound boxes of batteries at work. A physical examination revealed spasms of appellant's paracervical muscle on the right and left and an abnormal cervical spine rotation to the right. A foraminal compression test caused pain to radiate to appellant's right arm, and when his head was rotated to the right he experienced pain in his right shoulder. The physical examination revealed otherwise normal results.

Dr. Wallach obtained x-rays of appellant's cervical spine and diagnosed decreased disc height at C5-6 and C6-7. His assessment noted that on December 27, 2013 while appellant was at work lifting 50-pound boxes of batteries and stacking them into a pile he felt an immediate pulling sensation in his neck and right shoulder, which developed into shooting pain radiating down the back of his right arm and into his hand. Dr. Wallach stated that in the past three months appellant's pain slightly improved, but still bothered him daily, and he diagnosed cervicgia, cervical degenerative disc disease, and cervical radiculopathy. He discussed treatment options and recommended that appellant try physical therapy for his neck and right shoulder.

A March 24, 2014 certificate of disability signed by Dr. Wallach noted that he diagnosed cervical strain and indicated that his prognosis was good. Dr. Wallach also indicated that appellant had no restrictions and could return to work on March 24, 2014.

A March 24, 2014 physical therapy prescription from Dr. Wallach indicated that appellant should attend physical therapy for his cervical strain condition two to three times a week for four weeks.

In an April 23, 2014 letter, OWCP informed appellant that it could not authorize his request for a change of physicians because he did not provide a specific name, address, and telephone number for the physician he would like authorization for. It requested that he resubmit his request with the aforementioned information. OWCP also noted 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 was administratively handled to allow for payment of a limited amount of medical expenses. The merits of the claim, however, had not been formally considered. It noted that appellant could submit a claim for compensation (Form CA-7) and a time analysis form (Form CA-7a) for a maximum of four hours per visit for missed work due to treatment for a work-related injury.

A May 27, 2015 medical report by Dr. Barry Werries, an orthopedic surgeon, indicated that appellant's chief complaint was left knee pain, but noted that neck pain was still an active problem.⁴

In a November 17, 2017 development letter, OWCP noted that additional factual and medical evidence was required in support of appellant's claim. It noted, among other things, that the evidence was insufficient to establish that appellant actually experienced the employment incident alleged. OWCP requested that appellant submit a comprehensive narrative medical report from a qualified physician that included a diagnosis and an opinion, supported by medical rationale, addressing how the claimed employment incident caused or aggravated a medical condition. It also provided a questionnaire for his completion and afforded appellant 30 days to submit the requested factual and medical evidence.

By decision dated December 27, 2017, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed medical conditions and the accepted December 27, 2013 employment incident.

A June 20, 2018 letter provided by Dr. Wilson indicated that he examined appellant on January 20, 2014 and consulted with Dr. Smucker. Appellant explained his job duties and how he injured himself to Dr. Wilson, and Dr. Wilson noted that the type of injury sustained by appellant is consistent with the type of injury he observed and documented in his notes. He also indicated that as it had been four years since he conducted his examination of appellant, appellant reached his point of maximum medical improvement (MMI).

On December 24, 2018 appellant requested reconsideration.

⁴ On August 14, 2017 appellant filed a claim for compensation (Form CA-7) for a schedule award for permanent impairment due to his claimed December 27, 2013 injury.

An accompanying December 4, 2018 narrative medical report by Dr. Wilson indicated that appellant had experienced intermittent pain and weakness in his right neck, shoulder, and arm since December 2013 when he was lifting a box of batteries at work. Dr. Wilson noted that physical therapy improved appellant's condition, but he still had residual upper extremity pain and weakness and experienced episodes of severe pain at times, including an episode where he dropped a chainsaw. He also noted appellant's arm strength was so impaired that while prior to his injury he could pull a 50-pound bow, he currently could not shoot a bow. Dr. Wilson pointed out that appellant's condition has not improved since 2015. A physical examination of appellant revealed similar results to Dr. Wilson's January 20, 2014 examination aside from decreased strength and decreased range of motion in appellant's right upper extremity and right shoulder pain with right arm elevation under load. Dr. Wilson diagnosed cervical disc disease with radiculopathy from his work injury and intermittently severe chronic shoulder and brachial plexus pain due to his 2013 work injury. He recommended avoiding lifting heavy weights, an MRI scan, and scheduling an appointment with a neurologist.

Undated photographs of large boxes labeled "handle with care," "lift with care," and "heavy" were also provided to OWCP.

By decision dated March 22, 2019, OWCP denied modification of its December 27, 2017 decision, finding that the medical evidence of record failed to establish a causal relationship between appellant's diagnosed medical conditions and his accepted December 27, 2013 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 timely filed within the applicable time limitation of FECA,⁶ 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.⁷ 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.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁹ First, the employee must submit sufficient evidence to establish that he or she actually experienced the

⁵ *Supra* note 2.

⁶ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

employment incident at the time, place, and in the manner alleged.¹⁰ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹¹

Rationalized medical opinion evidence is 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 incident.¹²

Any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹³

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted December 27, 2013 employment incident.

January 10, 2014 hospital records signed by Dr. Haywood and Dr. Merritt noted that appellant presented with neck pain that radiated to his right shoulder and down his right arm which began on December 27, 2013 when he was lifting 50-pound boxes while at work. The records noted that appellant may have a slipped disc in his back, and contained a diagnosis of acute neck pain. The Board has consistently held that a diagnosis of “pain” does not constitute the basis for payment of compensation, as pain is a symptom rather than a specific diagnosis.¹⁴ Additionally, as stated above, the opinion of the physician must be one of reasonable medical certainty.¹⁵ Due to these deficiencies, the hospital records are insufficient to establish appellant’s claim.

January 20, 2014 notes from Dr. Wilson indicated that appellant was lifting 60-pound batteries when he noted pulling and then pain in his right neck, shoulder, and forearm. Dr. Wilson conducted a physical examination and diagnosed appellant with acute neck and shoulder pain with radiculopathy to the right arm and a herniated disc. In his June 20, 2018 letter, he stated that the type of injury sustained by appellant is consistent with the type of injury he observed and documented in his notes. In his December 4, 2018 medical report, Dr. Wilson indicated that appellant has experienced intermittent pain and weakness in his right neck, shoulder, and arm since December 2013 when he was lifting a box of batteries at work. He conducted a physical

¹⁰ *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

¹¹ *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 9.

¹² *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹³ *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹⁴ *J.P.*, Docket No. 19-0303 (issued August 13, 2019).

¹⁵ *See supra* note 12.

examination and diagnosed cervical disc disease with radiculopathy from his work injury and intermittently severe chronic shoulder and brachial plexus pain due to his 2013 work injury. In all of these documents, Dr. Wilson does not explain how appellant's lifting of the battery boxes caused his diagnosed neck conditions. To be of probative medical value, a medical opinion must explain how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions.¹⁶ As such, Dr. Wilson's reports are insufficient to establish appellant's claim.

Dr. Smucker's February 15, 2014 narrative medical report and work status form noted that appellant stated that while at work he was moving 50-pound boxes on December 27, 2013 and felt a pain in his neck which intensified after a few hours and radiated down his right arm. He conducted a physical examination and noted that he "presumed appellant had cervical radiculopathy." As Dr. Smucker did not provide an opinion on causal relationship, his report is of no probative value on the issue of causal relationship.¹⁷

Dr. Wallach's March 24, 2014 medical report noted that appellant presented with pain in his neck and right arm from a December 27, 2013 injury which occurred while lifting 50-pound boxes of batteries at work. He obtained x-rays of appellant's cervical spine and diagnosed him with decreased disc height at C5-6 and C6-7. Dr. Wallach noted that appellant experienced neck pain radiating down his right arm since his December 27, 2013 work injury, where while lifting 50-pound boxes of batteries and stacking them into a pile he felt an immediate pulling sensation in his neck and right shoulder which developed into shooting pain radiating down the back of his right arm and into his hand. He additionally diagnosed cervicgia, cervical degenerative disc disease, and cervical radiculopathy. Dr. Wallach does not explain how appellant's injury, which the doctor opined occurred when he was lifting heavy boxes, caused his diagnosed conditions. As noted previously, to be of probative medical value, a medical opinion must explain how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions.¹⁸ Additionally, such medical rationale is necessary in this case as appellant's medical findings reveal that he had a chronic medical condition (degenerative disc disease) prior to his work injury and no physician distinguished between the effects of his preexisting condition and his claimed work injury.¹⁹

The Board finds that the record lacks rationalized medical evidence establishing causal relationship between appellant's diagnosed medical conditions and the accepted December 27, 2013 employment incident. Thus, 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(a) and 20 C.F.R. §§ 10.605 through 10.607

¹⁶ A.W., Docket No. 19-0327 (issued July 19, 2019).

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

¹⁸ *Supra* note 15.

¹⁹ See S.N., Docket No. 18-1627 (issued May 15, 2019).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted December 27, 2013 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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