

³ The Board notes that following the May 20, 2021 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board.”

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted October 12, 2020 employment incident.

FACTUAL HISTORY

On October 14, 2020 appellant, then a 41-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 12, 2020 he injured his left shoulder, neck, and spine when his delivery mail truck was rear-ended while in the performance of duty. He explained that he sustained a whiplash-type injury which also caused numbness in his left hand and migraines. Appellant stopped work on October 12, 2020.

On October 12, 2020 appellant presented to Dr. Mareril Wheeler, a Board-certified emergency medicine specialist, with ongoing complaints of back pain relating to a motor vehicle accident (MVA). Dr. Wheeler diagnosed neck and back pain and released appellant to work on October 14, 2020.

In a development letter dated October 19, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the evidence necessary to establish his claim and provided a questionnaire for his completion. In a separate letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afforded both parties 30 days to respond.

In a diagnostic report dated October 12, 2020, Dr. Fred Laine, a Board-certified radiologist, performed a computerized tomography scan of appellant's cervical spine due to complaints of shoulder and neck pain, which revealed mild-to-moderate central stenosis at the C4-5 and C5-6 levels and moderate spondylosis with posterior osteophytic ridging at the T6-7 level. A police report of even date noted that appellant was the driver of a delivery mail truck when another vehicle crashed into the rear of the truck causing a collision.

In an October 21, 2020 diagnostic study of appellant's left shoulder, Dr. Kendall Capecci, a Board-certified radiologist, noted an impression of minimal osteoarthritic changes. In a note of even date, Dr. Neema Amin, a Board-certified orthopedist, related that appellant presented with a left shoulder injury due to an October 12, 2020 employment incident where his delivery truck was rear-ended by another vehicle traveling at 45 miles per hour while he was performing his work duties. Appellant reported difficulty using his left upper extremity with severe pain and weakness. In a return to work note of even date, Dr. Amin held appellant off work indefinitely until further evaluation.

In an October 27, 2020 diagnostic study of the lumbar spine, Dr. Taryar Zaw, a Board-certified radiologist, related appellant's history of back pain. He provided an impression of mild degenerative disease without fracture or subluxation.

In a November 19, 2020 response to OWCP's development questionnaire, appellant detailed the October 12, 2020 employment incident where his delivery truck was rear-ended by another vehicle while stopped. He explained that he was immediately numb with pain in his neck

which radiated to his arms and right hand. Appellant related that he notified his supervisor immediately following the incident.

In an undated response to OWCP's development questionnaire, the employing establishment acknowledged that the employment incident occurred on October 12, 2020 at 11:00 a.m. while appellant was on a direct route and was slowing to dismount his vehicle and complete a parcel delivery.

By decision dated November 25, 2020, OWCP accepted that the October 12, 2020 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the medical evidence of record did not establish a medical diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. An October 27, 2020 note from Dr. Jay Pavan, a Board-certified physiatrist, recounted the details of the employment incident, appellant's ongoing complaints of neck and back pain, and his treatment history. He reviewed diagnostic studies and noted physical examination findings.

On December 1, 2020 appellant timely requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP received hospital notes dated October 12 through 14, 2020, detailing the October 12, 2020 employment incident and appellant's subsequent medical treatment.

On February 10, 2021 appellant was treated by Dr. Amin for ongoing complaints of left shoulder pain. Dr. Amin noted that a magnetic resonance imaging (MRI) scan of the left shoulder had been completed and revealed a left shoulder rotator cuff tear and was suggestive of a laminar tear of the posterior supraspinatus.

In a February 11, 2021 note, Dr. Pavan noted that appellant was last seen in October 2020 for neck pain and bilateral upper extremity numbness. He diagnosed neck and lower back pain, cervical disc disease, and lumbar facet joint arthropathy.

A February 24, 2021 MRI scan report of the cervical and lumbar spine, from Dr. Ahmet Baykal, a Board-certified radiologist, demonstrated C3-4 and C4-5 disc herniations with moderate spinal stenosis and cord compression with neural foraminal narrowing at multiple levels.

On March 10, 2021 a telephonic oral hearing was held.

Thereafter, OWCP received additional evidence. In a March 12, 2021 note, Dr. Pavan related that appellant's condition was unchanged. He reviewed the findings of the cervical and lumbar spine MRI scans. Dr. Pavan diagnosed cervical and lumbar strain caused by the October 12, 2020 employment incident and opined that it likely irritated his underlying degenerative condition. He recommended that appellant continue light-duty activities.

An April 12, 2021 letter from C.W., a human resources manager with the employing establishment, explained that appellant had been out of work since October 12, 2020 pending the provision of work restrictions from his physician.

In a report dated May 19, 2021, Dr. Amin noted appellant's continued complaints of left shoulder pain. She diagnosed a left shoulder injury.

By decision dated May 20, 2021, OWCP's hearing representative modified OWCP's November 25, 2020 to find that the evidence of record established a diagnosed medical condition. However, the claim remained denied as the medical evidence of record was insufficient to establish that appellant's diagnosed medical conditions were causally related to the accepted October 12, 2020 employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including 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,⁵ 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.⁶ 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.⁷

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 and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.⁸

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship

⁴ *Supra* note 1.

⁵ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

between the claimant's diagnosed condition and the implicated employment factors. 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 specific employment factors identified by the claimant.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted October 12, 2020 employment incident.

On March 12, 2021 Dr. Pavan diagnosed cervical and lumbar strain related to the accepted October 12, 2020 employment incident and opined that the incident "likely" irritated appellant's underlying degenerative condition. The Board has held, however, that a report is of limited probative value regarding causal relationship if it does not contain sufficient medical rationale explaining how a given medical condition is related to the accepted employment incident.¹¹ The Board has held that medical opinions that are speculative or equivocal in nature are of diminished probative value.¹² For these reasons, Dr. Pavan's March 12, 2021 report is insufficient to meet appellant's burden of proof.

In her reports dated October 21, 2020 and February 10, 2021, Dr. Amin noted appellant's ongoing complaints of left shoulder pain following the MVA on October 12, 2020 and diagnosed a left shoulder rotator cuff tear. However, she did not offer a rationalized medical opinion explaining how the accepted employment incident caused his diagnosed left shoulder rotator cuff tear.¹³ Dr. Amin's reports are of limited probative value.

Likewise, in reports dated October 27, 2020 and February 11, 2021, Dr. Pavan noted appellant's ongoing complaints of neck, back and upper extremity pain with associated numbness. He diagnosed lower back pain, cervical disc disease and lumbar facet joint arthropathy. However, Dr. Pavan did not provide an opinion on the cause of appellant's conditions.¹⁴ His reports, therefore, are of no probative value and, are therefore, insufficient to establish appellant's claim.

On October 12, 2020 Dr. Wheeler noted appellant's complaints of pain following the October 12, 2020 MVA. He diagnosed neck and back pain. Similarly, Dr. Amin, in her May 19, 2021 report, noted appellant's complaints of left shoulder pain and diagnosed a left shoulder injury.

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *See V.D.*, Docket No. 20-0884 (issued February 12, 2021); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹² *A.D.*, Docket No. 21-0510 (issued September 29, 2022); *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

¹³ *J.N.*, Docket No. 21-0606 (issued November 23, 2021); *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *see H.A.*, Docket No. 18-1466 (issued August 23, 2019); *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

¹⁴ *T.W.*, *id.*; *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

The Board, however, has held that pain is a symptom, and not a medical diagnosis.¹⁵ Further, the Board has explained that a purported diagnosis of “injury” is not a firm diagnosis and a medical report lacking a firm diagnosis is of no probative value.¹⁶ As such, these reports are also insufficient to establish appellant’s claim.

The remaining medical evidence includes diagnostic studies from Drs. Laine, Capecci, Zaw, and Baykal dated October 12, 21, and 27, 2020 and February 24, 2021. However, diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether an employment incident caused a diagnosed condition.¹⁷ This evidence, therefore, is insufficient to establish appellant’s burden of proof.

As there is no rationalized medical evidence establishing a diagnosed medical condition causally related to the accepted October 12, 2020 employment incident, the Board finds that he 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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition causally related to the accepted October 12, 2020 employment incident.

¹⁵ Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

¹⁶ *A.T.*, Docket No. 21-0985 (issued April 27, 2022); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹⁷ *K.R.*, Docket No. 20-1103 (issued January 5, 2021); *F.S.*, Docket No. 19-0205 (issued June 19, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board