

FACTUAL HISTORY

On September 10, 2012 appellant, then a 55-year-old video communications teacher in Okinawa, Japan, filed a traumatic injury claim (Form CA-1) alleging that on August 30, 2012 he sustained a back, neck, elbow, and knee injury when he was breaking up a fight between two students and fell to the ground. In support of his claim, he submitted witness statements describing the incident.

In a September 9, 2012 Attending Physician's Report (Form CA-20), Dr. Yasutsugu Yanami, Board-certified in internal medicine, reported that appellant was controlling a fight between students 10 days earlier and then later complained of back, arm, and knee pain. He diagnosed muscle sprain at the arms, neck, and lower back and checked the box marked "No" when asked if he believed that the condition was caused or aggravated by the employment incident. Appellant was first examined on September 9, 2012 and released to full duty on September 10, 2012.

On January 30, 2014 appellant filed a claim for a schedule award (Form CA-7).

By letter dated February 10, 2014, OWCP stated that when appellant's claim was received, it appeared to be a minor injury, which had resulted in minimal lost time from work, and payment of a limited amount of medical expenses. For this reason the claim was administratively approved. However, the merits of the claim had not been formally considered and it reopened the claim for consideration because appellant filed a claim for a schedule award. OWCP informed him that the evidence of record was insufficient to support the merits of his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit such evidence within 30 days.

By letter dated March 10, 2014, appellant requested additional time to submit medical reports, as he had to acquire them from the Naval Hospital in Okinawa, Japan. He further stated that his treating physician refused to fill out the workers' compensation form and he continued to suffer from pain in his back and arms as a result of the work-related incident.

By decision dated April 3, 2014, OWCP denied appellant's claim finding the evidence was insufficient to establish that he sustained an injury because he did not submit any medical evidence containing a medical diagnosis in connection with the accepted August 30, 2012 employment incident. It further noted that his physician opined that his musculoskeletal conditions were not caused or aggravated by the employment incident.

On October 21, 2014 appellant, through counsel, requested reconsideration of OWCP decision. Counsel stated that he was submitting a report from Dr. Aliyar Parvin, Board-certified in family medicine, who provided a diagnosis of Non-Arteritic Anterior Ischemic Optic Neuropathy (NAION) with a rationalized opinion that the physical altercation at work caused appellant's injury.

In an October 20, 2014 medical report, Dr. Parvin reported that he had reviewed appellant's prior medical reports and spoken with him pertaining to the circumstances surrounding his work injury. He noted a past medical history significant for mild hypertension,

hyperlipidemia, and obesity. However, appellant was asymptomatic with regard to these diagnosed conditions and a full physical examination by a primary care physician in the six-month period prior to his injury revealed no concern or need for further testing. Based on these findings, Dr. Parvin determined that appellant was in relatively good health and stable condition prior to the work injury.

Dr. Parvin described the employment incident on August 29, 2012 when appellant was forced to wrestle a disruptive student to the ground and in the process was kicked, punched, and elbowed multiple times. Appellant stated that initially he mainly felt pain in his lower back, similar to a “pinched nerve or slipped disc,” and his arms. He denied any loss of consciousness, headaches, syncope, loss of vision, nausea, or vomiting.

Following the incident, appellant was first seen by a Japanese physician on September 3, 2012 and prescribed pain medications for the musculoskeletal pain he was experiencing following the incident. The pain was localized predominantly to his lower back and arms, but he stated that he felt “sore all over”. Dr. Parvin noted that there was no mention of any loss of consciousness, headaches, syncope, loss of vision, nausea, or vomiting. On September 26, 2012 appellant awakened with a loss of vision in his left eye and immediately sought medical attention at the Navy hospital emergency department where he was diagnosed with NAION. The diagnosis was again confirmed by an Ophthalmologist he saw the following day.

Dr. Parvin noted that appellant was in a stable and relatively healthy condition prior to the incident because his physical examination less than one year prior revealed well controlled blood pressures, no signs of hyperglycemia or insulin resistance, no visual impairments, no headaches, or any other systemic or focal symptoms. He explained that a major risk factor for NAION involved a cumulative group of general cardiovascular factors, the most common being diabetes, hypertension, and high cholesterol. Dr. Parvin explained that appellant had the latter two risk factors. He further explained that the most common precipitating factor, i.e. mechanism of injury, is a marked fall in the blood pressure during sleep (nocturnal arterial hypotension) which is why at least 75 percent of patients present with visual loss on first awaking from sleep, consistent with appellant’s own presentation. Thus, the underlying question was did the altercation that appellant was involved in contribute in any way to his presentation of NAION.

Dr. Parvin explained that the visual loss had occurred less than one month after the altercation. He stated that physiologically, any dramatic, or strenuous physical activity (*i.e.*, a physical altercation) would cause the release of stimulatory fight or flight hormones and neurotransmitters, resulting in an increased heart rate, blood pressure, intracranial pressure, core temperature, and basal metabolism. Additionally, physical pain (like the persistent back pain that appellant experienced) could cause the same exact response, albeit at a lower intensity.

Dr. Parvin noted that appellant was involved in an altercation on August 29, 2012 which resulted in physiological changes that lead to an increased heart rate, blood pressure, intracranial pressure, core temperature, and basal metabolism. Following the incident, appellant had low back pain which was not well controlled with the medical management he received, leading to persistent high blood pressures, heart rates, and intracranial pressures, etc. He then suddenly lost his vision.

Dr. Parvin stated that an argument for causation could be made from the temporal association between the altercation with the student and appellant's loss of vision given he likely had a persistently elevated average blood pressure for the month following the altercation, ultimately leading to an even greater nighttime drop in blood pressures (nocturnal arterial hypotension). This greater drop ultimately led to a greater level of hypoperfusion and damage to appellant's optic nerve. Dr. Parvin stated that this was highly plausible and fit the chronology of the aforementioned event.

Dr. Parvin concluded that appellant's loss of vision secondary to NAION had a strong temporal association with, and was a plausible mechanism of injury, related to the preceding altercation and its immediate effects in the following month. Consequently, while it would be difficult to assign precise percentages to such components of the injury, he opined that the altercation contributed to his current injury.

By decision dated December 4, 2014, OWCP affirmed the August 3, 2014 decision, as modified, finding that appellant established a firm medical diagnosis because the diagnoses of muscle sprain of the arms, neck, and lower back were made contemporaneous to the work injury. It denied the claim, however, finding that the medical evidence failed to establish that the diagnosed conditions were causally related to the accepted August 30, 2012 employment incident. OWCP further found that, although the condition of NAION was diagnosed, the evidence did not contain examination findings or medical records to establish the diagnosis or the relationship to the injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

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.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

² *Gary J. Watling*, 52 ECAB 278 (2001).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.⁵ 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.⁶

ANALYSIS

OWCP accepted that the August 30, 2012 employment incident occurred as alleged. The issue is whether appellant established that the incident caused him injury. The Board finds that he did not submit sufficient medical evidence to support that his diagnosed conditions are causally related to the August 30, 2012 employment incident.⁷

In a September 9, 2012 Attending Physician's Report, Dr. Yanami reported that appellant was controlling a fight between students 10 days prior and complained of back, arm, and knee pain. He diagnosed muscle sprain at the arms, neck, and lower back and checked the box marked "No" when asked if he believed that the condition was caused or aggravated by the employment incident. The Board finds that Dr. Yanami's report is insufficient to establish appellant's claim because the physician opined that appellant's muscle sprains were not, in fact, caused by the work-related incident. Thus, Dr. Yanami's report does not provide support for a traumatic injury and is insufficient to meet appellant's burden of proof.⁸

In an October 20, 2014 medical report, Dr. Parvin reported that he reviewed appellant's prior medical reports and spoke with him pertaining to the circumstances surrounding his work injury. He noted a past medical history significant for mild hypertension, hyperlipidemia, and obesity. Dr. Parvin noted that appellant was asymptomatic based on a physical examination six months prior. He concluded that appellant was in good health and a stable condition prior to the work injury. Dr. Parvin noted that on August 29, 2012 appellant was forced to wrestle a disruptive student to the ground and in the process was kicked, punched, and elbowed multiple times. Appellant stated that initially he mainly felt pain in his lower back, similar to a "pinched nerve or slipped disc," and his arms and denied any loss of consciousness, headaches, syncope, loss of vision, nausea, or vomiting.

⁵ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁶ *James Mack*, 43 ECAB 321 (1991).

⁷ See *Robert Broome*, 55 ECAB 339 (2004).

⁸ *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

The Board finds that the opinion of Dr. Parvin is not well rationalized.⁹ Dr. Parvin failed to physically examine appellant or provide any findings based on his own examination. OWCP procedures state that greater probative value is given to a medical opinion based on an actual examination. An opinion based on a cursory or incomplete examination will have less value compared to an opinion based on a more complete evaluation.¹⁰ In this instance, Dr. Parvin noted review of prior medical reports and provided a medical history based on these reports, more than two years after the employment incident. Moreover, the prior reports he references are not of record. Because they are unavailable they cannot support the medical opinions offered.

The Board further finds that Dr. Parvin's opinion that the work-related altercation contributed to appellant's NAION condition is highly speculative and equivocal.¹¹ Dr. Parvin explained that an argument could be made of temporal association between the altercation with the student and appellant's loss of vision given he likely had a persistently elevated average blood pressure for the month following the altercation, ultimately leading to an even greater nighttime drop in blood pressures (nocturnal arterial hypotension). However, he is not certain that appellant's blood pressure was elevated the month following the altercation and there are no medical reports of record establishing an elevation. Dr. Parvin goes on to speculate that the greater drop ultimately lead to a greater level of hypoperfusion and thus ischemia of the optic nerve, despite not knowing if appellant's blood pressure was elevated to begin with. The speculative nature of his statement is fortified when he states that this mechanism of injury was highly plausible and fit the chronology of the aforementioned event.¹² Dr. Parvin did not evaluate appellant at the time of the vision loss and provided a report over two years after the initial traumatic incident. The record contains no report from a physician contemporaneous to the time of the incident which establishes that appellant's NAION was caused by the August 30, 2012 employment incident. Nor does the record contain medical examination findings and reports which actually establish that appellant had a persistently elevated average blood pressure for the month following the altercation which suddenly dropped at nighttime, ultimately leading to his loss of vision. An explanation such as this, not supported by physical findings, does not constitute a well-rationalized medical opinion.¹³

Dr. Parvin noted that appellant was in a stable and relatively healthy condition prior to the incident because his physical examination less than one year prior revealed well controlled blood pressures, no signs of hyperglycemia or insulin resistance, no visual impairments, no headaches, or any other systemic or focal symptoms. The Board has held that an opinion that a

⁹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.6(a)(4) (September 2010).

¹¹ *M.R.*, Docket No. 14-11 (issued August 27, 2014).

¹² A medical opinion couched in such terms as "might be," "could be," or "may be" does not have as much probative value as an opinion stated unequivocally or with reasonable medical certainty. *Supra* note 10 at Chapter 2.810.5(c)(3).

¹³ *Id.* at Chapter 2.810.6(a)(2).

condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.¹⁴ The record contains no documented reports of elevated blood pressure levels or complaints involving the eye. The only medical report contemporaneous with the initial incident is Dr. Yanami's report which diagnosed muscle sprain at the arms, neck, and lower back yet Dr. Parvin failed to provide any discussion regarding these injuries.

Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹⁵ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹⁶ As Dr. Parvin's opinion was entirely speculative as to the cause of appellant's vision loss, his opinion is of limited probative value, and insufficient to meet his burden of proof.¹⁷

On appeal, counsel for appellant argues that Dr. Parvin's report establishes appellant's claim or at the very least requires further development of the medical evidence. The Board notes that it is appellant's burden to establish that his NAION was causally related to the August 30, 2012 employment incident.¹⁸ An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship.¹⁹ As he failed to provide a rationalized medical report in support of a traumatic injury on August 30, 2012, he has failed to meet his burden of proof. Thus, the Board finds that the medical evidence does not establish that appellant sustained an injury causally related to the August 30, 2012 employment incident.

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. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained traumatic injury in the performance of duty on August 30, 2012

¹⁴ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁵ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹⁶ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁷ *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

¹⁸ *O.S.*, Docket No. 13-438 (issued July 15, 2014).

¹⁹ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated December 4, 2014 is affirmed.

Issued: September 18, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board