

On February 29, 2008 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit such evidence.

In a letter dated March 5, 2008, the employing establishment controverted the claim stating that it accepted that the incident occurred at work, but it disputed that the claimed conditions resulted from appellant's fall.¹

Appellant submitted a February 13, 2008 report from Dr. Wen-Shyang Wu, an internist, who noted that appellant stated that he fell onto concrete hitting his left chest while coming into the employing establishment's building. Dr. Wu noted appellant's complaint of painful breathing. He also noted that appellant requested a chest x-ray to rule out rib fractures. Chest x-rays performed that same day by Dr. Eric Irwin, a Board-certified diagnostic radiologist, revealed no left rib fractures. Dr. Irwin also noted an incidental finding of a pulmonary nodule in the right upper lobe with a compression fracture in the thoracic spine. A February 14, 2008 progress note from Dr. Pamela LeClaire, Board-certified in family medicine, noted that appellant had fallen "again" on the previous day onto his left side and had broken his finger in the employing establishment's parking lot. Dr. LeClaire noted appellant's history of falls included falling in San Diego several months prior and hitting his face. She diagnosed multiple thoracic compression fractures.

In a February 18, 2008 computerized tomography scan of appellant's chest, Dr. Ernest Camponovo, a Board-certified diagnostic radiologist, found an enlarged heart, trace bilateral pleural effusions, but no pulmonary nodules. In a February 28, 2008 whole body bone scan report, he noted appellant's history of compression fractures. Dr. Camponovo found intense abnormal uptake in the mid-thoracic spine with an appearance consistent with compression fractures, but the etiology could not be determined. He noted degenerative disease in both shoulders and multiple areas of abnormality involving the left rib cage suggesting trauma. Dr. Camponovo determined that appellant had significant abnormalities in the mid-thoracic spine and compression fractures that were unusual for osteoporosis. He also noted that metastatic disease was a consideration especially because there were other areas of abnormality along the right hemithorax and probably both scapular angles.

In a March 4, 2008 statement, appellant indicated that he was treated on February 13, 2008 at employee health immediately after the incident. He further indicated that he saw his treating physician on February 14 and March 3, 2008. Appellant reiterated that he fell on ice on an untreated sidewalk at the employing establishment and suffered trauma to his ribs and back. He noted that he was diagnosed with fractures to his ribs and back.

By decision dated April 7, 2008, the Office denied appellant's claim for compensation finding that the medical evidence did not provide a diagnosis that could be connected to the fall at work.

A March 22, 2008 diagnostic report from Dr. George Broder, a Board-certified radiologist, found partial compression of T5 through T8, T11 and T12. Dr. Broder further found

¹ The employing establishment confirmed that the area where appellant fell was owned and controlled by the employing establishment.

that the most marked involving T5, T7 and T11. He also noted sclerotic changes involved at T7 and narrowing of intervertebral disc space at T10-T11. In a March 24, 2008 bone survey, Dr. Broder found no evidence of metastatic disease. On March 26, 2008 Dr. William Hartz, a Board-certified diagnostic radiologist, found that the results of a bone densitometry of appellant's left neck and left hip were normal.

On April 17, 2008 appellant requested an oral hearing. An August 26, 2008 report from Dr. LeClaire noted that appellant sustained injuries as a result of a fall occurring when he slipped on ice at work on February 13, 2008. Dr. LeClaire noted evaluating appellant on February 14, 2008 for complaints of pain on the left side of his seventh and eighth ribs and his mid to lower back. She noted diagnostic test results and opined that her examination findings were consistent with injuries to appellant's ribs and back. Dr. LeClaire further opined that her physical findings and imaging studies indicated that the injury to appellant's ribs and back were "more likely than not the result of trauma due to his fall."

At an August 20, 2008 oral hearing, appellant indicated that he had not sustained any previous falls. He also asserted that the February 14, 2008 report referred to his wife falling and breaking her finger in San Diego. Appellant also denied having any preexisting conditions that caused compression fractures. An Office hearing representative noted that she would keep the record open for 30 days to allow appellant to submit additional evidence. Appellant submitted another copy of Dr. LeClaire's August 26, 2008 report.

In a September 11, 2008 statement, Joan Schaub, a nurse and case manager at the employing establishment, noted that appellant's wife had informed her that appellant had multiple falls over the past year, including a fall before the work incident. She related that appellant's wife indicated that appellant fell from a ladder during the week of the oral hearing and had fractured additional discs in his spine and pelvis. Ms. Schaub also noted that appellant had pervasive bone softening in his spine. In light of this information, she stated that Dr. LeClaire's August 26, 2008 report did not honestly reflect the facts in her February 14, 2008 progress note.

By decision dated November 13, 2008, the hearing representative affirmed the April 7, 2008 decision finding that the medical evidence was insufficiently rationalized to support that the diagnosed conditions were causally related to the work incident.

On appeal appellant asserts that the medical evidence of record is sufficient to support his claim that he sustained a fall at work. He also denies the contention that he had a history of falls as this was not based on any medical evidence.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of

² 5 U.S.C. §§ 8101-8193.

duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. 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.⁴

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁵

ANALYSIS

The record reflects that appellant slipped and fell on an icy sidewalk at work on February 13, 2008. However, the medical evidence does not establish that his fall caused or aggravated his claimed rib and back injury.

Appellant asserts on appeal that Dr. LeClaire’s August 26, 2008 report is well reasoned and that the history, studies and findings she provided support his claim. In that report, Dr. LeClaire noted that appellant was injured from falling on ice at work. She opined that the injury to his ribs and back were “more likely than not the result of trauma due to his fall.” Although Dr. LeClaire’s report provides some support for causal relationship, her opinion is of diminished probative value as it is couched in speculative terms.⁶ She also does not address appellant’s history of falls or explain why his current condition was specifically caused by the February 13, 2008 fall and not attributable to any prior falls or conditions. The need for medical reasoning in support of Dr. LeClaire’s opinion on causal relationship is particularly important because the record indicates that appellant had a history of falls. Also, her February 14, 2008

³ *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *Id.*

⁵ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ See *Kathy Kelley*, 55 ECAB 206 (2004) (the Board has held that opinions such as, the implant “may have ruptured” and that the condition is “probably” related, “most likely” related or “could be” related are speculative and diminish the probative value of the medical opinion).

report noted that, contrary to appellant's assertions on appeal, he fell "again" on the previous day at the employing establishment's parking lot and had landed on his left side and broke his finger. Dr. LeClaire diagnosed multi-thoracic compression fractures. These reports from her are insufficient to establish appellant's claim. The report most contemporaneous with the claimed injury does not relate a specific diagnosed condition of the left side or upper back as being due to the fall while Dr. LeClaire's later report does not provide medical rationale to explain why a particular diagnosed condition was caused or aggravated by the February 13, 2008 incident and why any such condition was not due to one of appellant's prior falls to which the physician alluded to in her initial report.⁷

On February 28, 2008 Dr. Camponovo found compression fractures in the mid-thoracic spine but noted that the etiology was not determined although some findings suggested trauma. However, this report does not identify a specific cause of appellant's diagnosis and particularly does not address whether the February 13, 2008 fall caused or aggravated his condition. Dr. Camponovo's February 18, 2008 report did not address any left side or upper back condition and its relationship to the February 13, 2008 fall. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁸ Thus, these reports are insufficient to establish appellant's claim.

Likewise, on February 13, 2008, Dr. Wu noted that appellant fell on his left chest coming into the building at work. He further noted appellant's complaint of painful breathing. Dr. Wu indicated that appellant requested a chest x-ray to rule out rib fractures. As this report provided no opinion on the cause of appellant's condition, it is of limited probative value.⁹ Similarly, the reports of Drs. Hartz and Broder only provided the results of diagnostic tests and did not address the issue of causal relationship. As noted, medical evidence without an opinion on causal relationship is of limited probative value.

The record contains a February 13, 2008 radiology report from Dr. Irwin who found no fracture of appellant's left ribs. Dr. Irwin also noted an incidental finding of a pulmonary nodule in the right upper lobe with compression fractures in appellant's thoracic spine. This report, which is contemporaneous with appellant's fall, did not find any evidence of injury to appellant's left side despite his claimed left chest condition, and therefore does not support his claim. Although Dr. Irwin found a pulmonary nodule with compression fractures in appellant's thoracic spine, he did not attribute the cause of that condition to appellant's February 13, 2008 fall. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.¹⁰

⁷ See *P.K.*, 60 ECAB ___ (Docket No. 08-2551, issued June 2, 2009); *Virginia Richard (Lionel F. Richard)*, 53 ECAB 430 (2002) (the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship).

⁸ *K.W.*, 59 ECAB ___ (Docket No. 07-1669, issued December 13, 2007).

⁹ *Id.*

¹⁰ *Ernest St. Pierre*, 51 ECAB 623 (2000).

Consequently, the medical evidence is insufficient to establish that appellant sustained a traumatic injury on February 13, 2008 in the performance of duty.

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a traumatic injury on February 13, 2008 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated November 13 and April 7, 2008 are affirmed.

Issued: August 21, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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