

ISSUE

The issue is whether appellant has met his burden of proof to establish a right leg condition causally related to the accepted September 27, 2017 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 4, 2017 appellant, then a 64-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on September 27, 2017 he pulled a muscle in his right leg when lifting and pulling a pallet of mail while in the performance of duty. He stopped work on September 28, 2017.

By decision dated December 1, 2017, OWCP accepted that the September 27, 2017 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted any evidence "containing a medical diagnosis in connection with the injury and/or event(s)." Consequently, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

On December 22, 2017 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on April 26, 2018.

Appellant submitted a March 27, 2018 report by Dr. Russell H. Silver, a Board-certified physiatrist, who noted appellant's history of injury and referenced his findings from examination on October 24, 2017 that revealed ecchymosis and pain in the right gastrosoleus region and right knee. He opined that appellant's diagnosis of right muscle tear in the right calf was "a direct result of the accident that occurred on September 27, 2017" and that he continued to be partially disabled.

By decision dated July 9, 2018, OWCP's hearing representative modified the December 1, 2017 decision, finding that appellant had established a medical diagnosis in connection with the September 27, 2017 accepted employment incident. However, the hearing representative affirmed the December 1, 2017 decision as modified, finding that the medical evidence of record was insufficiently rationalized to establish causal relationship between a diagnosed medical condition and the accepted September 27, 2017 employment incident.

On March 15, 2019 appellant, through counsel, requested reconsideration of the July 9, 2018 decision.

By decision dated June 6, 2019, OWCP denied modification of the July 9, 2018 decision.

On June 24, 2019 appellant, through counsel, appealed to the Board. By decision dated June 30, 2020, the Board affirmed the June 6, 2019 decision, finding that appellant had not met

³ Docket No. 19-1446 (issued June 30, 2020).

his burden of proof to establish a right leg condition causally related to the accepted September 27, 2017 employment incident.⁴

OWCP received additional evidence. Dr. Silver treated appellant on August 20, 2020 for right knee, right leg, and right shoulder pain. Findings on examination revealed ecchymosis and pain in the right gastrosoleus area, limited range of motion of the right ankle and knee, and right lower extremity weakness. Dr. Silver diagnosed lumbosacral radiculopathy, cervical spine radiculopathy, bilateral carpal tunnel syndrome, bilateral tibial neuropathy, and right knee and ankle pain. He recommended additional diagnostic testing and physical therapy.

On September 22, 2020 appellant requested reconsideration.

By decision dated December 15, 2020, OWCP denied modification of the June 6, 2019 decision.

OWCP received additional evidence. In a duty status report (Form CA-17) dated January 17, 2020, Dr. Silver diagnosed neck and shoulder pain and advised that appellant could not resume work. On February 25, 2021 he evaluated appellant for back pain radiating into the bilateral lower extremity with numbness and tingling. Appellant's history was significant for traumatic injury at work. Findings on examination revealed limited range of motion of the right knee, SI joint tenderness to palpation, right trochanter hip tenderness, bilateral paraspinal tenderness of the cervical and lumbar spine, bilateral lower extremity strength deficits, and numbness with tingling in the bilateral lower extremities. Dr. Silver diagnosed low back pain, neck pain, bilateral hand/wrist pain, right hip pain, right knee pain, right shoulder pain, and right hand pain. On March 4, 2021 he noted that appellant would remain off work for an additional three weeks due to right shoulder pain and low back pain.

Appellant underwent a series of diagnostic tests. A November 7, 2020 x-ray of the cervical spine revealed severe degenerative change at C5-7, moderate degenerative change at C3-4, and mild degenerative change at C2-3 and C4-5. An x-ray of the lumbar spine dated November 11, 2020 revealed dextroscoliosis, L4-5 degenerative anterolisthesis, marked disc space narrowing, associated degenerative change at L5-S2, and bullet fragments. A computerized tomography (CT) scan of the lumbar spine dated November 17, 2020 revealed dextroscoliosis, L4-5 degenerative anterolisthesis, marked disc space narrowing, associated degenerative change at L5-S1, and bullet fragments. A magnetic resonance imaging (MRI) scan of the cervical spine dated November 23, 2020 revealed disc osteophyte complexes, uncovertebral spurring from C3-4 through C7-T1, mild canal stenosis at C4-5 and C5-6, severe left-sided foraminal encroachment at C5-6, moderate left-sided foraminal narrowing at C3-4, and mild-to-moderate right-sided foraminal narrowing at C4-5.

In a November 27, 2020 report, Dr. Warren Lyons, a family practitioner, advised that appellant would remain off work due to severe degenerative arthritis complicated by multiple injuries to the neck, back, and shoulders.

OWCP received an unsigned attending physician's report (Form CA-20).

⁴ *Id.*

On March 11, 2021 appellant, through counsel, requested reconsideration.

By decision dated June 4, 2021, OWCP denied modification of the December 15, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 and that the claim was filed within the applicable time limitation period of FECA,⁵ 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 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 on a traumatic injury or an occupational disease.⁷

To determine whether an employee sustained a traumatic 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.⁸ The second component is whether the employment incident caused a personal injury.⁹

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 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.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that a disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

⁵ See *R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *Y.K.*, Docket No. 18-0806 (issued December 19, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *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).

⁸ *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *D.C.*, Docket No. 18-1664 (issued April 1, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

¹¹ *D.H.*, Docket No. 18-1410 (issued March 21, 2019).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right leg condition causally related to the accepted September 27, 2017 employment incident.

On prior appeal the Board reviewed the evidence before OWCP at the time it issued its June 6, 2019 decision and found that it was insufficient to establish that appellant sustained an injury causally related to the accepted September 27 2017 employment incident. The Board's review of the previously submitted medical evidence of record is *res judicata* absent further review by OWCP under section 8128 of FECA and, therefore, the prior evidence need not be addressed again in this decision.¹²

In an August 20, 2020 report, Dr. Silver treated appellant for right knee, right leg, and right shoulder pain. He diagnosed lumbosacral radiculopathy, cervical spine radiculopathy, bilateral carpal tunnel syndrome, bilateral tibial neuropathy, and right knee and ankle pain. In a CA-17 dated January 17, 2020, Dr. Silver diagnosed neck and shoulder pain and advised that appellant could not work. Similarly, on February 25, 2021 he treated appellant for back pain radiating into the bilateral lower extremity. Dr. Silver diagnosed low back pain, neck pain, bilateral hand/wrist pain, right hip pain, right knee pain, right shoulder pain, and right hand pain. Likewise, on March 4, 2021 he noted that appellant would remain out of work for an additional three weeks due to right shoulder pain and low back pain. On November 27, 2020 Dr. Lyons also advised that appellant would remain out of work due to severe degenerative arthritis complicated by multiple injuries to the neck, back, and shoulders. However, in these reports, Dr. Silver and Dr. Lyons did not provide an opinion regarding whether a diagnosed medical condition was causally related to the accepted September 27, 2017 employment incident. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.¹³ Therefore, these reports are of no probative value regarding appellant's claim for a September 27, 2017 traumatic injury and they are insufficient to establish his claim.

Appellant submitted diagnostic tests including a November 7, 2020 x-ray of the cervical spine, an x-ray of the lumbar spine dated November 11, 2020, a CT scan of the lumbar spine dated November 17, 2020, and an MRI scan of the cervical spine dated November 23, 2020. The Board has held, however, that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.¹⁴

OWCP received an unsigned attending physician's report (Form CA-20). There is no evidence that the document is from a physician. The Board has held that reports that are unsigned

¹² *S.C.*, Docket No. 19-0920 (issued September 25, 2019); *W.C.*, Docket No. 18-1386 (issued January 22, 2019); *see also G.W.*, Docket No. 19-1281 (issued December 4, 2019).

¹³ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁵

As appellant has not submitted rationalized medical evidence establishing causal relationship between his right leg condition and the accepted September 27, 2017 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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 established an injury to his right knee causally related to the accepted September 27, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 2022
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

¹⁵ See *M.T.*, Docket No. 21-0783 (issued December 27, 2021); *Merton J. Sills*, 39 ECAB 572, 575 (1988); see also *Bradford L. Sullivan*, 33 ECAB 1568(1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in FECA).