

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**D.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Trenton, NJ, Employer**

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**Docket No. 14-10  
Issued: February 25, 2014**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 3, 2013 appellant filed a timely appeal from a September 4, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on July 10, 2013.

**FACTUAL HISTORY**

On July 11, 2013 appellant, then a 52-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury to the lower back in the performance of duty on July 10, 2013. He stated that between 9:00 a.m. and 2:30 p.m. he had performed heavy lifting

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

work, filling in numerous holes with dirt, continuously for six hours in hot conditions and that this work had caused his injury.<sup>2</sup> The employing establishment controverted appellant's claim, contending that his injury resulted from willful misconduct, writing that he had not taken breaks and hydrated as instructed.

In a note dated July 15, 2013, Dr. William Gessler, a chiropractor, requested a work restriction of no more than 10 pounds of lifting due to an acute exacerbation of lower back pain. He also requested a work restriction of staying indoors away from heat, explaining that the humidity caused appellant's disc injury to exacerbate. Dr. Gessler noted that appellant's lower back would take until July 29, 2013 to stabilize.

By letter dated July 29, 2013, OWCP informed appellant that the evidence of record was insufficient to support his claim. It afforded him 30 days to submit additional evidence and respond to its inquiries, noting that chiropractors do not qualify as physicians under FECA unless there is a diagnosed spinal subluxation, demonstrated by x-ray. OWCP also requested that appellant's employing establishment submit a statement identifying the particular safety regulations which was allegedly violated, along with the number of times and the manner in which the employee and coworkers were informed of the rule, as well as the manner in which the rule had been enforced.

In a diagnostic report dated July 12, 2013, Dr. James Callahan, a Board-certified radiologist, noted that appellant had bone destruction or a compression fracture and that arthritis was present, but that there had not been a significant change since a prior examination on May 25, 2010. The report, sent by facsimile, was badly degraded and partially illegible.

In a narrative statement dated August 5, 2013, appellant clarified that his claim was for an injury to his back, not his head. He stated that on July 10, 2013, his manager instructed him and another custodian to go outside and fill dirt in numerous holes for approximately six hours in weather that was warmer than 90 degrees Fahrenheit. Appellant noted that this was not his daily work routine and contacted his union president at approximately 12:30 p.m. His union president referred him to a safety coordinator, who informed him that there were guidelines from the Occupational Health and Safety Administration regarding how to work in hot conditions. Appellant's union president faxed the guidelines to appellant's manager. At 2:50 p.m., a supervisor read the guidelines to appellant and his coworker. After his shift, appellant felt pain in his back. He asserted that he had not been notified of the guidelines regarding working in hot conditions until he had already been working in those conditions.

By letter dated August 6, 2013, Dr. Gessler stated that appellant could return to work with no restrictions as of that date, noting that the recent exacerbation of his previous disc injury had resolved.

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<sup>2</sup> Appellant submitted two front pages with his Form CA-1, one of which appears to have been completed by the employing establishment, as it described the cause of his injury as, "employee was raking top soil dirt and did not take breaks as instructed resulting in dehydration and heat exhaustion," and the nature of his injury as a traumatic injury to the skull or head.

By decision dated September 4, 2013, OWCP denied appellant's claim. It found that he had not submitted any medical evidence containing a diagnosis from a qualified physician. OWCP stated that the medical evidence of record was from a chiropractor, who had not diagnosed a subluxation of the spine as demonstrated by x-ray. OWCP found that appellant had filed a timely claim and that the evidence supported that the incident of July 10, 2013 had occurred as described. It noted that it had received lumbar spine x-ray results dated July 12, 2013.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 timely filed within the applicable time limitation period of FECA, that an injury<sup>4</sup> 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.<sup>5</sup>

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. A fact of injury determination is based on two elements. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>6</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>7</sup> 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.<sup>8</sup> The weight of the medical evidence is determined by its reliability, its probative

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

<sup>5</sup> *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *Id.* *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

<sup>7</sup> *See J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

<sup>8</sup> *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>9</sup>

### ANALYSIS

Appellant alleged that on July 10, 2013, he sustained an injury to his lower back in the performance of duty. OWCP determined by decision dated September 4, 2013 that the incident occurred as alleged, but he had not submitted sufficient medical evidence to establish a diagnosis, causally related to the incident, from a qualified physician.<sup>10</sup> The Board finds that appellant submitted sufficient evidence to establish a diagnosis from a qualified physician, but that he did not submit sufficient evidence to establish that this diagnosis resulted from a traumatic incident on July 10, 2013.

Appellant submitted a diagnostic report dated July 12, 2013 from Dr. Callahan, which stated that appellant had bone destruction or a compression fracture and that arthritis was present, but there had not been a significant change since a prior examination on May 25, 2010. The report, sent by facsimile, was badly degraded and partially illegible, but the legible portion of the report contained a diagnosis of bone destruction or a compression fracture. Thus, appellant submitted medical evidence containing a diagnosis from a qualified physician.

However, this report contained no opinion as to the provenance of appellant's diagnosis. The Board has held that medical evidence that does not opine as to the causal relationship between appellant's injury and specified work-related factors is of diminished probative value on the issue of causal relationship.<sup>11</sup> To establish causal relationship, a physician must provide an opinion on whether the employment incident described caused or contributed to claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rational.<sup>12</sup> As Dr. Callahan's report contained no opinion as to the causal relationship between the July 10, 2013 employment incident and the diagnosis of bone destruction or a compression fracture, it is not sufficient to establish appellant's claim.

Appellant also submitted reports from Dr. Gessler, a chiropractor. Section 8101(2) of FECA<sup>13</sup> provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulations by the Secretary.<sup>14</sup> Dr. Gessler did not diagnose a spinal subluxation. Without a diagnosis of a

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<sup>9</sup> *James Mack*, 43 ECAB 321, 329 (1991).

<sup>10</sup> The letter of decision was dated August 30, 2013; however, there was hand-written note indicating that the decision was not released until September 4, 2013. The Board finds that the effective date of this decision was September 4, 2013.

<sup>11</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>12</sup> *See John W. Montoya*, 54 ECAB 306, 309 (2003); *see also H.D.*, Docket No. 07-1026 (issued October 1, 2007).

<sup>13</sup> 5 U.S.C. § 8101(2).

<sup>14</sup> *See* 20 C.F.R. § 10.311.

spinal subluxation from x-ray, a chiropractor is not a physician under FECA and his opinion does not constitute competent medical evidence.<sup>15</sup> Therefore, Dr. Gessler's reports are of no probative value on the issue of whether appellant has been diagnosed with a medical condition in connection with the incident of July 10, 2013.

As appellant did not submit a medical report from a qualified physician containing a rationalized opinion as to the causal relationship between the traumatic incident of July 10, 2013 and his diagnosis, he has not submitted sufficient evidence to establish his claim for compensation.

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, although appellant did establish a diagnosis, he did not meet his burden of proof to establish that the claimed traumatic injury is causally related to the incident of July 10, 2013.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 4, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2014  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> See *Jay K. Tomokiyo*, 51 ECAB 361, 367-68 (2000).