

leaned over and opened doors at work. He stopped work on July 14, 2010. The employing establishment noted that the only knowledge of this incident was from the employee's statements.

In a July 12, 2010 duty status report and work excuse slip, an unknown provider noted that appellant complained of left leg pain and provided an illegible diagnosis. Appellant was excused from work on that day and authorized to return to work on July 12, 2010 with restrictions.

In a July 12, 2010 examination record, Dr. Francis X. Camillo, a Board-certified orthopedic surgeon, circled the word "lumbar" and the initials "AP [anterior-posterior], LAT [lateral] and SPOT [schedule medical diagnostic testing]."

In a letter dated July 23, 2010, OWCP advised appellant that the evidence submitted was insufficient to support his claim and requested additional evidence. It requested a detailed description of the alleged July 6, 2010 incident and a medical report from his treating physician, which included a history of injury, firm diagnosis, findings and test results, treatment provided, and a physician's opinion, based on medical rationale, explaining how the diagnosed condition was caused or aggravated by the claimed injury.

In a July 26, 2010 return to work slip, Dr. Camillo authorized appellant to return to work on July 27, 2010. Appellant also provided verification of an August 9, 2010 appointment.

In an August 9, 2010 report, Dr. Camillo noted that appellant's pain had improved and that he first examined appellant on July 12, 2010 after a July 6, 2010 lifting incident at work. On examination, he noted 5/5 motor strength and no sensory deficits.

In an August 13, 2010 report, Dr. Camillo stated that on July 12, 2010 he examined appellant for complaints of back pain. Appellant reported that on July 6, 2010 he leaned over to open a door when he experienced pain in his lower back and leg. He was able to go throughout the whole day, but the pain worsened in the right leg. Dr. Camillo noted that July 12, 2010 x-rays revealed decreased disc height at L4-5 and L5-S1 and radiculopathy on the right side running down the back of his right leg in the S1 distribution. He reexamined appellant on July 26, 2010 and observed that his pain had improved. Dr. Camillo diagnosed disc herniation based on the decreased disc height on x-rays at L5-S1, as well as radiculopathy or pain in a nerve root that ran down the back of the leg on the right in the S1 distribution.

In a decision dated August 27, 2010, OWCP denied appellant's claim on the grounds of insufficient factual evidence to establish that the alleged incident occurred at the time, place and in the manner alleged. It also found insufficient medical evidence to establish that he sustained a diagnosed condition causally related to the alleged incident.

On August 31, 2010 appellant filed a request for an oral hearing.

In a January 13, 2011 report, Dr. Marvin Leventhal, a Board-certified orthopedic surgeon, diagnosed lower leg joint pain and tear of medial cartilage or meniscus of knee. He noted that appellant was scheduled for surgery on January 25, 2011.

On February 10, 2011 a telephone hearing was held. Appellant was represented by counsel and noted that he was a dock clerk, which required him to lean down to open and close truck doors on the inbound dock. The doors were on 18-wheeler trailers with a little latch on them which he had to undo and lift the door to raise it. On July 6, 2010 appellant arrived at work around 6:00 a.m. and developed pain in his right leg when he began to open doors. He opened and closed about 20 doors until 7:30 a.m. The pain worsened to the point appellant could not move or lift his leg without pain and he went home. After several days appellant went to the emergency room. He was out of work for approximately two weeks. OWCP's hearing representative noted Dr. Camillo's diagnoses of disc herniation and right leg pain and pointed out that the medical evidence did not state whether appellant's conditions were causally related to the described work activity. Appellant was advised to obtain a report from Dr. Camillo addressing causal relation.²

In a decision dated April 7, 2011, OWCP denied appellant's claim finding insufficient medical evidence establishing that he sustained a low back or right leg condition causally related to the accepted July 6, 2010 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence.⁴ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the two components of "fact of injury" have been established.⁵ First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁶ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁷

Casual relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical opinion evidence.⁸ 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 specified

² During the hearing, counsel contended that appellant sustained an injury to his right knee from working as a dock clerk for over 30 years. OWCP's hearing representative explained that if appellant was claiming a right knee condition as a result of his daily activities over a number of years, he needed to file an occupational disease claim.

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁶ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁷ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *D.E.*, 58 ECAB 448 (2007); *Mary J. Summers*, 55 ECAB 730 (2004).

employment factors or incident.⁹ 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.¹⁰

ANALYSIS

Appellant alleged that on July 6, 2010 he sustained pain to his low back and right leg when he leaned over and opened doors at work. OWCP's hearing representative found that the incident occurred, as alleged, on July 6, 2010, appellant experienced pain in his low back and right leg when he leaned over to open multiple truck doors during his shift. The Board finds that appellant failed to provide sufficient medical evidence to establish that he sustained a traumatic injury as a result of the July 6, 2010 employment incident.

Appellant provided reports from Dr. Camillo and Dr. Levanthal. In an August 13, 2010 report, Dr. Camillo diagnosed a disc herniation. In a January 13, 2011 report, Dr. Levanthal diagnosed a tear of medial cartilage of the knee. Dr. Camillo and Dr. Levanthal also diagnosed radiculopathy and lower leg pain. The Board has held, however, that pain is not a firm medical diagnosis.¹¹ While appellant provided a detailed account of his job duties on July 6, 2010 at the hearing, the reports from the physicians of record do not reflect this history of injury. The physicians of record do not provide a medical explanation as to how these duties on July 6, 2010 would have physiologically caused a herniated disc or right knee. Dr. Camillo initially reported on August 9, 2010 that appellant had "a lifting incident at work" on July 6, 2010. On August 13, 2010 he reported that appellant experienced pain in his back and leg on July 6, 2010 after leaning over to open a door. Other than reiterating appellant's complaints, neither Dr. Camillo nor Dr. Levanthal address the cause of appellant's leg pain or back condition or explain how his low back or knee conditions resulted from the July 6, 2010 work event. The Board has found 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.¹² These reports are insufficient to establish appellant's claim.

On appeal, appellant, alleged that he was injured on the clock and that the doctor never returned or lost the statement explaining his injury request. As noted, he has the burden of proof to establish the essential elements of his claim.¹³ The medical evidence of record does not establish that appellant's claimed conditions were causally related to the July 6, 2010 incident. As appellant has not submitted rationalized medical opinion evidence, he did not meet his burden of proof to establish his claim.

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

¹¹ *Robert Broome*, 55 ECAB 339, 342 (2004).

¹² *K.W.*, 59 ECAB 271 (2007); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

¹³ *Supra* note 4.

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 did not meet his burden of proof to establish that he sustained an injury on July 6, 2011.

ORDER

IT IS HEREBY ORDERED THAT the April 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2011
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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