

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

M.H., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
CARDIAC CATH LAB, Omaha, NE, Employer**

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**Docket No. 12-1362
Issued: December 3, 2012**

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 June 11, 2012 appellant filed a timely appeal from a January 26, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (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 that he sustained a back injury in the performance of duty on July 15, 2011.

FACTUAL HISTORY

On August 9, 2011 appellant, then a 48-year-old nurse, filed a claim for injury alleging that he sustained a back injury on July 15, 2011. He indicated that he had reinjured himself,

¹ 5 U.S.C. § 8101 *et seq.*

three days after returning to work from a prior injury, when he bent down to pick up a small package.²

A health unit note dated August 11, 2011, signed by Greg Loyd, a physician's assistant, stated an impression of lumbar strain and advised that appellant should refrain from lifting, carrying or pushing over 10 pounds.

An August 23, 2011 magnetic resonance imaging (MRI) scan diagnostic report signed by Dr. David Poage, a Board-certified physician in diagnostic radiology, found L5-S1 high intensity zone and an associated right lateral recess disc protrusion touching right S1 nerve root.

Dr. Victoria Halgren, a Board-certified physician in family medicine, noted in an August 25, 2011 report that appellant was seen for back pain that he had sustained on the job months ago and that an MRI scan report indicated that appellant had a herniated disc. On August 29, 2011 she stated that appellant continued to experience severe low back pain from disc herniation and that he was awaiting a neurosurgical appointment.

Also submitted were several work restriction forms signed by Dr. Halgren who indicated that appellant's injury was work related by a check mark.

A health unit record dated September 6, 2011, prepared by the physician's assistant, noted that appellant had continued back pain radiating down the left leg.

OWCP received medical records indicating that appellant sustained a work-related low back strain on June 20, 2011. On October 3, 2011 appellant was offered a temporary light-duty assignment to accommodate his June 20, 2011 injury.

In a decision dated November 22, 2011, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish a diagnosed medical condition which could be connected to the accepted July 15, 2011 employment incident.

Appellant disagreed with the decision and submitted a request for reconsideration.

An October 17, 2011 report signed by Dr. Thomas Gensler, Board-certified in aerospace medicine, noted appellant's back pain and recommended physical therapy to accelerate recovery.

A November 15, 2011 addendum to the August 25, 2011 report from Dr. Halgren noted that appellant's injury was sustained at work two months prior to his visit and diagnosed appellant with back strain with disc herniation.

Also submitted was a December 30, 2011 medical report signed by Dr. Gregory Gordon, a Board-certified interventional radiologist, who stated that he had worked with appellant within a professional capacity for over two and a half years, and did not see him complain of any lower back symptoms until the July 15, 2011 injury. Dr. Gordon stated that he began treating appellant two months following the injury. He also asserted that appellant was referred to him for "pain

² Appellant filed this claim as a recurrence of disability from a June 20, 2011 injury. OWCP converted the claim to a claim for traumatic injury.

treatment procedures for his low back pain which was sustained from work-related straining and lifting.” Dr. Gordon noted that “there is a direct causal relationship to [appellant]’s symptoms, physical exam[ination] and imaging findings. [Appellant]’s imaging findings are consistent with a tear of the L5[-]S1 intervertebral disc, consistent with an annular tear and annular leak. No significant loss of disc space height is present to suggest a chronic change.” Dr. Gordon also explained that the “radiographic findings of discs ... may cause mass-like effects on adjacent nerves as well as irritation from the chemical leak of the substance within disc space. This is known as a ‘Chemical Mechanical Theory’ for low back and correlates very well with the historical events noted throughout [appellant]’s recovery.” Dr. Gordon concluded that “I have no question that there is a direct causal relationship between the strain and stress induced from the lifting with the annular tear within the disc space.”

By decision dated January 26, 2012, OWCP denied modification of the prior decision.

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.³ 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.⁴

In order 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.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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 based on a complete factual and medical background, supporting such a causal relationship.⁶ 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

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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.⁷

ANALYSIS

OWCP accepted that the July 15, 2011 employment incident occurred as alleged. The issue is whether appellant established that the incident caused his back injury. The Board finds that he did not submit sufficient medical evidence to support that his low back conditions were causally related to the July 15, 2011 employment incident.

Dr. Halgren's August 25, 2011 medical report mentioned that appellant had a back injury from his work "months ago," and diagnosed him with herniated disc. Her opinion is of limited probative value as it is not based upon a complete medical history. Dr. Halgren did not provide a history of appellant's June 20, 2011 injury, nor of his July 15, 2011 injury. Lacking the appropriate factual and medical history, she did also did not provide a rationalized medical opinion explaining causal relationship between appellant's lumbar strain and herniated disc conditions and the July 15, 2011 employment incident. Similarly, Dr. Halgren's November 15, 2011 addendum report also did not discuss the July 15, 2011 work incident, and it did not include an opinion as to how the incident had caused his back condition. As such, the probative value of these medical reports is limited. While Dr. Halgren's work restriction notes indicated that appellant's condition was work related by a check mark, they do not satisfy the causal relationship element of his claim. The Board has held that, without further explanation or rationale, a check mark on a form report is not sufficient to establish causation.⁸

Dr. Gordon's December 30, 2011 medical report asserted that there existed a direct causal relationship between the strain and stress induced by lifting and the annular tear within the disc space, and that the tear led to his back pain. However, while the report adequately explained how the annular tear led to appellant's symptoms, it failed to clearly explain the mechanism through which the July 15, 2011 lifting incident had caused the annular tear. The Board also notes that Dr. Gordon did not discuss the significance of appellant's June 20, 2011 injury and did not discuss in detail the lifting incident of July 15, 2011. The Board has held that medical reports consisting solely of conclusory statements without supporting rationale are of diminished probative value,⁹ and that the opinion of the physician must be based on a complete factual and medical background, 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 As such, Dr. Gordon's report also failed to satisfy the causal relationship requirement of appellant's claim.

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

⁹ *William C. Thomas*, 45 ECAB 591 (1994).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Appellant submitted additional reports from Dr. Poage and Dr. Gensler, however, these reports did not address the causal relationship issue. While OWCP also received progress notes from a physician's assistant, the Board has long held that a "physician's assistant" is not a "physician" as defined under FECA. Their opinions are of no probative value.¹¹ The Board therefore finds that, as appellant did not submit rationalized medical evidence to establish that his back condition was causally related to his July 15, 2011 employment incident, appellant has failed to meet his burden of proof.

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 met his burden of proof in establishing that he sustained an injury in the performance of duty on July 15, 2011.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2012
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

¹¹ See *Roy L. Humphrey*, 57 ECAB 238 (2005).