

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

---

C.B., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
REGIONAL OFFICE, Indianapolis, IN, )  
Employer )

---

**Docket No. 11-1525  
Issued: January 13, 2012**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 16, 2011 appellant filed a timely appeal of a May 26, 2011 Office of Workers' Compensation Programs' merit decision denying an employment-related injury. 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 to consider the merits of the case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish that he sustained a back injury on May 12, 2010.<sup>2</sup>

---

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

<sup>2</sup> On appeal to the Board appellant submitted a claim for an occupational disease dated June 7, 2011 and alleging a back condition related to his employment beginning on February 3, 2010. As OWCP has not issued a final decision regarding this claim, the Board will not review this claim on appeal. 20 C.F.R. § 501.2(c).

## **FACTUAL HISTORY**

On May 12, 2010 appellant, then a 35-year-old file clerk, filed a traumatic injury claim alleging that he aggravated his preexisting back condition bending over to pick up a book on that date. In support of his claim, he submitted a work release note from, Dr. Michael A. Phelps, a chiropractor, dated May 19, 2010. Appellant also submitted x-rays dated May 14, 2010 which demonstrated minimal degenerative osteophytes at L3 and L4.

On May 14 and 20, 2010 a nurse practitioner, Ruth Dwyer, provided work restrictions and noted appellant's work injury in February 2010. Appellant underwent a magnetic resonance imaging (MRI) scan of the thoracic spine on May 24, 2010 which demonstrated multiple thoracic disc protrusions. He also underwent a lumbar MRI scan on May 24, 2010 which exhibited no disc protrusion, central canal stenosis or nerve root impingement. On May 17, 2010 Ms. Dwyer diagnosed chronic back pain.

In a letter dated January 4, 2011, OWCP requested additional factual and medical information from appellant including a report from a physician. By decision dated February 4, 2011, it denied his claim as he failed to submit the necessary medical evidence establishing a diagnosed condition as a result of the May 12, 2010 employment injury.

Appellant requested a review of the written record on February 22, 2011. In support of his request, he submitted a form report dated February 10, 2011 from Dr. John Lomas, a physician Board-certified in physical medicine and rehabilitation, diagnosing low back pain with lumbar degenerative disc disease and degenerative joint disease. Dr. Lomas attributed appellant's increasing pain to work duties. On June 22, 2010 he again examined appellant for bilateral upper back pain. Dr. Lomas provided a date-of-injury of February 20, 2010 and diagnosed sacroilitis and low back pain. He examined appellant on January 31, 2011 and diagnosed low back pain and thoracic pain.

By decision dated May 26, 2011, OWCP's hearing representative denied appellant's claim for a traumatic injury finding that appellant had failed to submit medical evidence mentioning the alleged May 12, 2010 employment injury. He further noted that appellant had not alleged an additional traumatic injury in February 2010 and suggested that if appellant's back condition was of a gradual onset related to work duties, that appellant should file an occupational disease claim.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained 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

---

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

OWCP defines 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.”<sup>6</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. 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.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has submitted uncontroverted evidence that he sustained a lifting incident on May 12, 2010 when he bent and lifted a book in the performance of duty. However, the Board finds that he has not submitted the necessary medical evidence to establish an injury resulting from this incident. Appellant submitted reports from a chiropractor and a nurse practitioner in support of his claim. Under FECA neither a nurse practitioner<sup>9</sup> nor a chiropractor<sup>10</sup> are physicians. As these notes were not signed by a physician the notes have no probative value in establishing his claim.<sup>11</sup> Therefore these reports are not sufficient to meet appellant’s burden of proof.

Appellant also submitted a series of reports from Dr. Lomas regarding his back condition beginning in January 2011. Dr. Lomas first examined appellant in June 2010 and attributed his condition to his work duties in February 2010. He did not mention the May 12, 2010 employment incident and did not specifically describe the cause of appellant’s back pain. The Board finds that these reports are not sufficient to meet appellant’s burden of proof as Dr. Lomas did not attribute appellant’s diagnosed lumbar disc disease and joint disease to the established employment incident on May 12, 2010. Without medical evidence indicating that his accepted

---

<sup>4</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> 20 C.F.R. § 10.5(ee).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *J.Z.*, 58 ECAB 529 (2007).

<sup>9</sup> *L.D.*, 59 ECAB 648 (2008).

<sup>10</sup> 5 U.S.C. § 8101(2). The term “physician” 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 demonstrated by x-ray to exist.

<sup>11</sup> *Merton J. Sills*, 39 ECAB 572 (1988).

employment incident resulted in a diagnosed condition, appellant has failed to meet his burden of proof to establish his traumatic injury 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 submitted the necessary medical evidence to establish a traumatic injury on May 12, 2010 as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 26, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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