

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

By letter dated April 18, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the medical and factual evidence to submit and given 30 days to provide additional information.

In an April 25, 2011 report, Dr. Robert S. Jutkowitz, an examining Board-certified neurologist, diagnosed L5 radiculopathy due to a herniated discs, which he attributed to appellant's work. On April 6, 2001 appellant related getting a charlie horse in her right leg while pulling a package five days prior. She related having difficulty walking and driving home following the incident. An electromyogram taken on April 5, 2011 revealed very acute right L5 radiculopathy. Dr. Jutkowitz reviewed a magnetic resonance imaging (MRI) scan taken on April 7, 2011 which showed degenerative changes in the lower thoracic and lumbar spine, a central L3-4 disc protrusion and L4-5 disc herniation.

By decision dated May 19, 2011, OWCP denied appellant's traumatic injury claim. It found the medical evidence insufficient to establish a causal relationship between the diagnosed back condition and the accepted April 2, 2011 incident.

Following the denial of appellant's claim, OWCP received a May 12, 2011 report from Dr. Allan B. Perel, a Board-certified neurosurgeon, who related that she sustained a work injury on April 2, 2011 when she noted a right leg cramp/charlie horse while lifting a package. Appellant related having problems walking immediately after the incident and driving home. Dr. Perel noted that an April 5, 2011 electromyograph revealed very acute L5 right radiculopathy and an April 7, 2011 MRI scan revealed T12-L1 degenerative changes, L4-5 disc herniation, central C3-4 disc protrusion and L5-S1 disc protrusion. He noted significant discogenic findings on appellant's MRI scan. A physical examination revealed mild paraspinal muscle spasm, positive right straight leg raising and lower lumbar paraspinal muscle spasm. Based on physical examination and review of objective evidence, Dr. Perel opined that appellant was unable to return to her work as a postal clerk and was currently totally disabled from working.

On June 17, 2011 appellant requested an oral hearing, which was held before an OWCP hearing representative on February 12, 2012.

By decision dated March 18, 2012, the hearing representative affirmed the denial of appellant's claim. She found the medical evidence of record insufficient to establish that appellant's back condition was causally related to the April 2, 2011 employment incident.

On May 23, 2012 appellant requested reconsideration and submitted evidence in support of her request.

In a May 15, 2012 report, Dr. Perel diagnosed acute right L5 radiculopathy, which he attributed to the April 2, 2011 employment incident. In support of this conclusion, he reported that on April 2, 2011 appellant was involved in repetitive twisting and bending of her torso while lifting packages of different weights. Dr. Perel noted that appellant initially incorrectly described her injury as a charlie horse.

By decision dated August 27, 2012, OWCP denied modification.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</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.<sup>5</sup> 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>6</sup> 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.<sup>7</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>8</sup> An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>9</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>10</sup> 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

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<sup>2</sup> *Id.*

<sup>3</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>4</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

<sup>6</sup> *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>7</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

<sup>8</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>9</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>10</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

compensable employment factors.<sup>11</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>12</sup>

### ANALYSIS

Appellant alleged that she sustained a charlie horse on April 2, 2011 while lifting a package. She was subsequently diagnosed with acute right L5 radiculopathy, which was attributed to the April 2, 2011 employment incident. OWCP found the evidence sufficient to establish that the incident occurred as alleged but that the medical evidence of record was insufficient to establish the diagnosed condition was causally related to the April 2, 2011 employment incident. The issue is whether appellant sustained acute right L5 radiculopathy due to the April 2, 2011 employment incident. The Board finds that she has failed to meet her burden of proof.

In an April 25, 2011 report, Dr. Jutkowitz, a Board-certified neurologist, diagnosed L5 radiculopathy due to a herniated disc, which the physician attributed to appellant's work. In reports dated May 12, 2011 and May 15, 2012, Dr. Perel also diagnosed acute right L5 radiculopathy, which he attributed to the April 2, 2011 employment incident. Both physicians noted that, at the time of the April 2, 2011 incident, appellant believed the injury to be a charlie horse in her right leg, but that a review of the objective evidence showed involvement of her spine. Neither physician, however, provided adequate medical rationale explaining how her acute right L5 radiculopathy was caused or aggravated by the April 2, 2011 employment incident. Dr. Perel provided a general description of the work appellant was performing on April 2, 2011, but did not sufficiently address how her duties caused or aggravated acute L5 radiculopathy or herniated disc. Lacking thorough medical rationale on the issue of causal relationship, the reports are of limited probative value and not sufficient to establish that she sustained an employment-related injury in the performance of duty on April 2, 2011.<sup>13</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>14</sup> Causal relationship must be established by rationalized medical opinion evidence and he failed to submit such evidence.

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<sup>11</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>12</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>13</sup> See *S.S.*, 59 ECAB 315 (2008); *Richard A. Neidert*, 57 ECAB 474 (2006); *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet an employee's burden of proof).

<sup>14</sup> See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Consequently, appellant has not met her burden of proof in establishing that she sustained an acute right L5 radiculopathy causally related to the April 2, 2011 employment incident.

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 failed to establish that she sustained an injury in the performance of duty on April 2, 2011, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 27, 2012 is affirmed.

Issued: July 18, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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