



to the supply room, he felt strong pain in his lower back and legs walking through the auto bays. Appellant stopped work on October 23, 2012.

In an October 24, 2012 report, Dr. John P. Minadeo, Board-certified in emergency medicine, noted that appellant was seen for back pain. Appellant related that the symptoms began yesterday while moving boxes at work. Dr. Minadeo indicated that he noted that they were not particularly heavy. He examined appellant and diagnosed low back pain. An October 26, 2012 report from Dr. Michal A. Horgan, a Board-certified neurosurgeon, indicated that appellant had leg and back pain since October 23, 2012. He advised that appellant had no prior history of back pain.

In an October 26, 2012 operative report, Dr. Horgan, advised that appellant presented to the emergency room with left leg weakness and severe pain. He recommended immediate surgery based on a large disc herniation. Dr. Horgan diagnosed large L4-5 disc herniation with left lower extremity weakness and possible early cauda equine syndrome. He performed a bilateral L4-5 laminotomy and right sided microdiscectomy. Dr. Horgan discharged appellant on October 28, 2012 and recommended a return to work on November 2, 2012 with restrictions on lifting, bending, and twisting. Additionally, he recommended that appellant be allowed to frequently get up from his chair. OWCP received numerous hospital documents including physical therapy, nursing, and physician's assistant records.

In a May 22, 2013 letter, OWCP advised appellant that additional factual and medical evidence was needed to establish his claim. It also explained that a physician's opinion explaining how the reported work incident caused or contributed to his condition was crucial to his claim.

In a May 15, 2013 narrative statement, appellant indicated that, on the date of injury, his activities were comprised of setting up supplies in the hazardous materials cabinets. He noted that he was changing the location for the product and reorganizing cabinets. Appellant indicated that the boxes weighed between 10 and 20 pounds. He related that his main movement was a lot of twisting at the waist. Appellant also noted that he was walking back and forth between the offices and that it was at one of these points that the pain began in his back. He also explained that he believed that he was misdiagnosed in the emergency room.

In a May 26, 2013 report, Dr. Horgan explained that he was asked to provide an opinion on causality regarding a large L4/5 disc herniation causing leg weakness and cauda equine syndrome. He indicated that he had reviewed the medical records, which included that appellant presented to the emergency room on October 26, 2012 with complaints of back and leg pain and documented foot drop. Dr. Horgan advised that appellant related that the pain began while walking down a hallway at work on October 23, 2012. He indicated that appellant was taken to the operating room for a discectomy and left the hospital on October 28, 2012. Dr. Horgan opined that appellant related that his pain occurred while at work. He indicated that appellant was "confident" that his pain was related to the subsequent disc herniation, which "occurred while at work." Dr. Horgan explained that herniated discs "can occur at any time without a specific antecedent event directly prior." He opined that it was "not in my purview to state that walking down a hallway and suffering a disc herniation at work is enough to support a claim for workers' compensation." Dr. Horgan explained that, if there was further evidence to support

appellant's claim that his pain began while walking down the hallway at work, then he was able to say, more likely than not, that the herniated disc began at that time. He advised that, if there was evidence of a specific injury, or antecedent event, he was not aware of it.

By decision dated June 26, 2013, OWCP denied appellant's claim on the grounds that the medical evidence did not demonstrate a claimed condition related to work-related events.<sup>2</sup>

On July 19, 2013 appellant requested a hearing, which was held on January 21, 2014.

In a July 19, 2013 narrative statement, appellant explained that he was at work lifting, moving, pulling, and pushing heavy objects on the date of injury. He indicated that he was doing a lot of bending and twisting, and at that time, he did not realize the extent of his pain, until he began to walk back to the office area. Appellant explained that he had gone approximately 20 steps when the pain became extreme and that he made it only halfway to the office area before he had to stop. He noted that, when he eventually made it to the office area, he informed his supervisor and went home for the rest of the day. Appellant tried to relax and be still but, around 2:00 a.m., his leg had gone numb and his foot was cold. He went to the hospital and was sent home with pain medication. Appellant explained that, on October 25, 2012, he sought medical treatment with his local physician and was advised to obtain a magnetic resonance imaging (MRI) scan right away. He indicated that he could not get an appointment until the following Monday. Appellant noted that, on October 26, 2012, he could no longer tolerate the pain and had his wife drive him to the emergency room, where he was admitted immediately. He indicated that, due to his pain, he was not able to get the MRI scan until 10:00 p.m. that night. Afterwards, appellant was sedated and had surgery. He indicated that his physicians believed that his injury occurred in the course of his normal duties.

On February 18, 2014 appellant noted that he was providing an updated letter from his physician, and opined that he believed that Dr. Horgan tied the injury and statements together. Submitted with his letter was a February 10, 2014 report from Kathleen Maloney, a physician's assistant, who explained that he was under care for a large lumbar disc herniation for which he underwent a bilateral laminotomy and right microdiscectomy. Ms. Maloney advised that a letter from Dr. Horgan was attached, addressing the causality of the disc herniation. She related that appellant reported that, prior to the onset of symptoms, he had been lifting, twisting, and bending repetitively at work. Furthermore, Ms. Maloney advised that he was in the process of moving boxes weighing approximately 10 to 50 pounds. She also related that appellant indicated that his pain began radiating down his leg within 20-feet of walking down the hallway and that the pain was in his lower back and got worse with each step. Although Ms. Maloney indicated that, a letter from Dr. Horgan was attached to her letter, a new report from him was not received.

OWCP also received an October 29, 2012 home health certification and plan of care from Dr. Horgan, a medication sheet signed by Dr. Robert Zelazo, a Board-certified neurologist, nurses' notes, and physical therapy notes.

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<sup>2</sup> OWCP found that, although Dr. Horgan indicated in his letter of May 26, 2013 that appellant's pain began walking down a hallway at work, he did not explain how appellant's work caused or contributed to the diagnosed medical condition: L4-5 herniated disc. For example, Dr. Horgan made no mention of appellant's prior activities to include that he was moving boxes weighing between 10 to 20 pounds.

By decision dated April 8, 2014, an OWCP hearing representative affirmed the June 26, 2013 decision.

### **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<sup>4</sup> and that an injury was sustained in the performance of duty.<sup>5</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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 of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. 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.<sup>9</sup>

### **ANALYSIS**

In this case, appellant alleged that on October 23, 2012 he sustained an injury to his back while lifting, moving, pulling, and pushing heavy objects in the performance of duty. OWCP found that the claimed events occurred. Therefore, the Board finds that the first component of fact of injury is established; the claimed incident -- that appellant was lifting, moving, pulling, and pushing objects at work occurred as alleged.

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989). For a definition of the term “traumatic injury,” *see* 20 C.F.R. § 10.5(ee).

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

However, the medical evidence of record is insufficiently rationalized to establish the second component of fact of injury, that the employment incident caused an injury. The medical evidence contains no reasoned explanation of how the specific employment incident on October 23, 2012 caused or aggravated an injury.<sup>10</sup>

The most relevant report is the May 26, 2013 report from Dr. Horgan, who explained that he was asked to provide an opinion on causality regarding a large L4/5 disc herniation causing leg weakness and cauda equine syndrome. Dr. Horgan noted that appellant presented to the emergency room on October 26, 2012 with complaints of back and leg pain, and a documented foot drop. He noted that appellant explained that his pain began while walking down a hallway at work on October 23, 2012. Dr. Horgan advised that appellant underwent a discectomy and left the hospital on October 28, 2012. He indicated that appellant related that he was “confident” that his pain was related to the subsequent disc herniation, which “occurred while at work.” Dr. Horgan advised that herniated discs “can occur at any time without a specific antecedent event directly prior.” He opined that it was “not in my purview to state that walking down a hallway and suffering a disc herniation at work is enough to support a claim for workers’ compensation.” Dr. Horgan asserted that, if there was further evidence to support appellant’s claim that his pain began while walking down the hallway at work, then he was able to say, more likely than not, that appellant’s herniated disc began at that time. He advised that, if there was evidence of a specific injury, or antecedent event, he was unaware of it. The Board finds that this is not a definitive opinion on causal relationship. However, to the extent that he is offering a supportive opinion, it is speculative. The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.<sup>11</sup> Dr. Horgan did not unequivocally explain how particular work duties on October 23, 2012 caused or contributed to appellant’s back condition and subsequent need for surgery. Other reports from Dr. Horgan are insufficient to establish the claim as they do not contain a specific opinion on causal relationship.<sup>12</sup>

In an October 24, 2012 report, Dr. Minadeo noted that appellant was seen for a chief complaint of back pain and advised that he related that the symptoms began yesterday while moving boxes at work. He diagnosed low back pain. The Board notes that while Dr. Minadeo described appellant’s activities he did not offer a clear opinion on causal relationship. Even considering Dr. Minadeo’s statement regarding the history of injury as an opinion in support of causal relationship, this report is insufficient as he did not address how specific work activities caused or contributed to the diagnosed medical condition.

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<sup>10</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

<sup>11</sup> See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (the Board has generally held that opinions such as the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662 (2005) (medical opinions which are speculative or equivocal are of diminished probative value).

<sup>12</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

Other medical reports, including reports of diagnostic testing, are insufficient to establish the claim as these reports do not address how employment factors contributed to a diagnosed medical condition. The record also contains reports from nonphysicians such as nurses, physician assistants, and physical therapists. However, these reports are of no probative value as none of these care providers is a physician as defined under FECA and, therefore, they are not competent to provide a medical opinion.<sup>13</sup>

As the medical evidence submitted by appellant does not contain a physician's opinion addressing how the October 23, 2012 work activities caused or aggravated a back condition, this evidence is of limited probative value and is insufficient to establish that the October 23, 2012 employment incident caused or aggravated a specific injury.

On appeal, appellant made several arguments in support of his claim. They included an enhanced description of his activities at work. He also argued that Dr. Horgan's report supported causal relationship. However, as found above, the issue is medical in nature and the medical evidence was insufficient to establish causal relationship. Appellant also submitted additional evidence. However, the Board has no jurisdiction to review this evidence for the first time on appeal.<sup>14</sup> 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 in establishing that he sustained a traumatic injury in the performance of duty on October 23, 2012.

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<sup>13</sup> See *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physicians assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *Charley V.B. Harley*, 2 ECAB 208 (1949) (the Board held that medical opinion, in general, can only be given by a qualified physician). See also 5 U.S.C. § 8101(2).

<sup>14</sup> 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 8, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 1, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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