

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

V.S., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
CUSTOMS & BORDER PROTECTION,)
San Juan, PR, Employer)

**Docket No. 14-2028
Issued: June 3, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On September 23, 2014 appellant filed a timely appeal from a July 10, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 an injury in the performance of duty on October 31, 2013, as alleged.

On appeal appellant contends that the medical evidence establishes a causal relationship between his diagnosed condition and the accepted factor of employment.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 2, 2013 appellant, then a 62-year-old customs and border protection officer, filed a traumatic injury claim alleging that on October 31, 2013, during defensive tactics training, he fell backwards and hit his back and left arm, sustaining injuries to his lower back and left arm and possible muscle strain.

By letter dated November 29, 2013, OWCP asked appellant to submit information in support of his claim. In response, appellant submitted a November 21, 2013 report wherein Dr. Jose Camuñas, a Board-certified family practitioner, assessed appellant with unspecified backache and pain in his limb. Dr. Camuñas noted that appellant associated the back and left arm pain with trauma experienced during a work drill on October 31, 2013. He opined that the trauma most probably will not have any sequelae. Appellant also submitted November 21 and December 10, 2013 work capacity evaluations wherein Dr. Camuñas indicated that appellant is able to perform his usual job. Finally, he submitted notes from his November 10, 2013 visit to the San Juan Health Center Urgent Care Clinic, wherein a physician with an illegible signature diagnosed appellant with back and arm strain.

By decision dated January 9, 2014, OWCP denied appellant's claim as he had not submitted medical evidence containing a medical diagnosis in connection with the claimed employment incident.

On January 17, 2014 appellant requested review of the written record before an OWCP hearing representative. With his request, he resubmitted medical evidence already in the record. Appellant also submitted an attending physician's form report signed by Dr. Charlene DaCosta,² dated November 7, 2013, listing a diagnosis of back and left arm strain. Dr. DaCosta stated that she believed that appellant's condition was caused or aggravated by an employment activity in that it was caused by movement and trauma while training. She indicated that appellant was able to resume regular work on November 8, 2013.

By decision dated July 10, 2014, an OWCP hearing representative found that appellant had established a diagnosis of back and arm strains but that no medical evidence had been received which explained how appellant's diagnosed conditions were related to the October 31, 2013 incident. Accordingly, he affirmed the January 9, 2014 decision.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or

² The Board is unable to verify whether Dr. DaCosta is Board-certified.

³ 5 U.S.C. § 8102(a).

exposure occurring at the time, place, and in the manner alleged. He or she must also establish that such event, incident, or exposure caused an injury.⁴

Causal relationship is a medical issue,⁵ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁶ must be one of reasonable medical certainty,⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁸

ANALYSIS

OWCP has accepted that the October 31, 2013 work incident occurred as alleged, and it found that appellant had been diagnosed with back and arm strain. An OWCP hearing representative found, however, that the medical evidence failed to explain how appellant's diagnosed conditions were related to the October 31, 2013 incident.

In this regard, Dr. Camuñas noted that appellant experienced back and left arm pain with a trauma associated with a work drill on October 31, 2013. However, pain is a symptom and not a compensable medical diagnosis.⁹ Accordingly, Dr. Camuñas did not provide a medical diagnosis.

The November 10, 2013 record from appellant's visit to the San Juan Health Center Urgent Care Clinic is also deficient as it contains an illegible signature and therefore cannot be identified as having been prepared by a physician. Therefore it does not constitute competent medical opinion evidence.¹⁰

The November 7, 2013 attending physician's report by Dr. DaCosta is also insufficient to establish causal relationship. Dr. DaCosta diagnosed appellant with back and left arm strain, and checked a box indicating that she believed that the condition was caused or aggravated by the employment activity, noting that it was caused by movement and trauma while in work training. However, Dr. DaCosta did not provide a well-rationalized opinion explaining how appellant's back and left arm strain were related to this employment incident.

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ *See Morris Scanlon*, 11 ECAB 384, 285 (1960).

⁸ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ *A.L.*, Docket No. 14-1285 (issued November 4, 2014); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹⁰ *See Merton J. Sills*, 39 ECAB 572 (1988).

Causal relationship must be based on rationalized medical opinion evidence.¹¹ A physician must accurately describe appellant's work duties and medically explain the process by which these duties would have caused or aggravated his condition.¹² Because appellant has not provided such medical opinion evidence in this case, he failed to meet his burden of proof.

Appellant may submit new evidence or argument as part of a formal 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 an injury in the performance of duty on October 31, 2013, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the July 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹¹ *M.E.*, Docket No. 14-1064 (issued September 29, 2014).

¹² *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also G.G.*, Docket No 15-234 (issued April 9, 2015).