

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

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C.C., Appellant )

and )

DEPARTMENT OF JUSTICE, ALCOHOL, )  
TOBACCO, FIREARMS & EXPLOSIVES, )  
Washington, DC, Employer )

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**Docket No. 15-197  
Issued: May 5, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On November 5, 2014 appellant filed a timely appeal from an October 22, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish a back condition causally related to a March 21, 2014 employment incident.

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

## **FACTUAL HISTORY**

On May 21, 2014 appellant, then a 40-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that he injured his lower back on March 21, 2014 as a result of pursuing and apprehending a suspect on foot in the performance of duty.

In an April 23, 2014 report, Dr. Vaughan Allen, a Board-certified neurosurgeon, found that appellant had persistent low back pain and bilateral leg pain, left greater than right. He noted that appellant was a federal employee and had extensive treatment, epidurals, and physical therapy. Dr. Allen opined that appellant needed a laminectomy and fusion surgery.

Appellant underwent a lumbar laminectomy at L5-S1 and posterolateral lumbar fusion performed by Dr. Paul McCombs, a Board-certified neurosurgeon, on May 1, 2014. In a follow-up report dated June 30, 2014, Dr. McCombs found appellant doing extremely well two months after his surgery and released him to full duty without restrictions.

On July 3, 2014 appellant requested authorization for his May 1, 2014 back surgery.

In a July 10, 2014 letter, OWCP stated that when appellant's claim had been received, it appeared to be a minor injury, which resulted in minimal or no lost time from work, and payment of a limited amount of medical expenses was administratively approved. It reopened the claim for consideration because appellant had requested authorization for surgery. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

Appellant submitted a narrative statement dated July 15, 2014 explaining that he had begun seeing his primary care physician in December 2013 for low back pain. He stated that he had experienced significant relief from epidural injections until the March 21, 2014 employment incident, which significantly exacerbated his condition.

A December 20, 2013 magnetic resonance imaging (MRI) scan revealed an anterolisthesis of L5 on S1, disc desiccation, mild broad-based disc bulge with mild central canal stenosis, hypertrophic degenerative changes involving the facet joints, and moderately severe neuroforaminal narrowing on the left with impingement of the exiting L5 nerve root.

In an April 23, 2014 report, Dr. McCombs diagnosed spondylolisthesis at L5-S1 and reported that appellant had "been struggling with this since November of 2012." He opined that appellant was unable to perform the duties of his federal employment and recommended surgical intervention.

By decision dated August 15, 2014, OWCP denied appellant's claim as the medical evidence was insufficient to establish a causal relationship between his back condition and the March 21, 2014 employment incident.

On September 3, 2014 appellant requested reconsideration and submitted an August 27, 2014 report from Dr. McCombs who diagnosed a preexisting condition of spondylolisthesis at L5-S1 which he "may have been able to live with had it not been for the injury that [he] sustained as a result of pursuing an armed suspect and fighting with him for a weapon." He opined that, if the incident had not occurred, appellant "may have been able to tolerate [his]

spondylolisthesis without the need for operative intervention going forward.” Dr. McCombs explained that he saw “this commonly with spondylolisthesis, in which patients are asymptomatic, and then their nerve compromise is brought to clinical light as a result of an accident such as [appellant’s] or a motor vehicle accident.”

In a September 12, 2014 letter, OWCP requested a supplemental report from Dr. McCombs and afforded him 30 days to respond to its inquiries.

In a report dated September 24, 2014, Dr. McCombs reiterated his opinion that appellant’s L5-S1 spondylolisthesis was aggravated by the March 21, 2014 employment incident. He stated that appellant “had a preexisting spondylolisthesis that was not clinically significant until the time of his accident” and resulted in the need for operative intervention. Physical examination findings included deficits involving the L5 nerve root, which was affected and resulted in weakness of the dorsiflexion of the foot, as well as numbness in the L5 distribution. Dr. McCombs based his opinion on the history of injury provided by appellant and the objective findings of his physical examination.

By decision dated October 22, 2014, OWCP denied modification of its prior decision.

### **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 timely filed within the applicable time limitation period of FECA, that an injury<sup>3</sup> was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>5</sup>

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

<sup>3</sup> OWCP regulations define 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. 20 C.F.R. § 10.5(ee).

<sup>4</sup> See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical issue 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 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>6</sup>

### ANALYSIS

OWCP has accepted that the employment incident of March 21, 2014 occurred at the time, place, and in the manner alleged. The issue is whether appellant's back condition resulted from the March 21, 2014 employment incident. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between the condition for which compensation is claimed and the employment incident.

In an April 23, 2014 report, Dr. McCombs diagnosed spondylolisthesis at L5-S1 and noted that appellant had "been struggling with this since November of 2012." On August 27, 2014 Dr. McCombs stated that appellant had a preexisting condition of spondylolisthesis at L5-S1 which he "may have been able to live with had it not been for the injury that [he] sustained as a result of pursuing an armed suspect and fighting with him for a weapon." He opined that, if the incident had not occurred, appellant "may have been able to tolerate [his] spondylolisthesis without the need for operative intervention going forward." Dr. McCombs explained that he saw "this commonly with spondylolisthesis, in which patients are asymptomatic, and then their nerve compromise is brought to clinical light as a result of an accident such as [appellant's] or a motor vehicle accident." On September 24, 2014 Dr. McCombs reiterated his opinion that appellant's L5-S1 spondylolisthesis was aggravated by the March 21, 2014 employment incident, indicating that appellant "had a preexisting spondylolisthesis that was not clinically significant until the time of his accident."

The Board finds that Dr. McCombs' reports are not based on an accurate history of appellant's back condition. Dr. McCombs indicated that appellant had suffered from L5-S1 spondylolisthesis since November 2012. However, he failed to provide a narrative setting forth a full and accurate history of appellant's back condition, including a comparison of any diagnostic testing obtained after November 2012 with prior tests, and did not provide an opinion adequately addressing how the March 21, 2014 incident contributed to appellant's preexisting back condition. The Board has held that medical opinions based on an inaccurate history have diminished probative value.<sup>7</sup> The Board finds that Dr. McCombs' opinion is therefore of diminished probative value on the issue of causal relationship and insufficient to establish that appellant sustained an employment-related injury on March 21, 2014.

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<sup>6</sup> *Id.* See Gary J. Watling, 52 ECAB 278 (2001).

<sup>7</sup> See Frank Luis Rembisz, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value). See also Douglas M. McQuaid, 52 ECAB 382 (2001); *N.H.*, Docket No. 13-849 (issued July 17, 2013).

In an April 23, 2014 report, Dr. Allen noted persistent low back pain and bilateral leg pain, left greater than right and that appellant had extensive treatment, epidurals, and physical therapy. This report did not, however, provide sufficient medical rationale explaining how appellant's condition was caused or aggravated by pursuing and apprehending a suspect at work on March 21, 2014.<sup>8</sup>

In support of his claim, appellant submitted an MRI scan dated December 20, 2013. This document does not constitute competent medical evidence as it does not contain rationale by a physician relating appellant's disability to his employment.<sup>9</sup> As such, the Board finds that appellant did not meet his burden of proof with this submission.

As appellant has submitted insufficiently rationalized medical evidence to support his allegation that he sustained an injury causally related to a March 21, 2014 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

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 to establish that his back condition was causally related to a March 21, 2014 employment incident, as alleged.

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<sup>8</sup> See *A.D.*, 58 ECAB 149 (2006) (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).

<sup>9</sup> See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 22, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 5, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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