

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

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**J.S., Appellant**

**and**

**DEPARTMENT OF COMMERCE, SEATTLE  
REGIONAL CENSUS CENTER, Seattle, WA,  
Employer**

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**Docket No. 11-205  
Issued: August 2, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On November 1, 2010 appellant filed a timely appeal from a July 6, 2010 decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for a traumatic 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 over the merits of this case.

**ISSUE**

The issue is whether appellant sustained a back injury on May 22, 2010 in the performance of duty.

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

## **FACTUAL HISTORY**

On May 24, 2010 appellant, then a 41-year-old enumerator, filed a traumatic injury claim alleging that he injured his back on May 22, 2010 as a result of his employment. He stated that the injury occurred when the resident he was attempting to interview pushed him backwards.

On June 4, 2010 OWCP requested additional evidence, including a medical report containing a diagnosis of appellant's condition and medical rationale explaining how the condition was causally related to the May 22, 2010 employment activities.

On June 8, 2010 appellant submitted several documents from Allen Hayter, a physician's assistant, all dated May 22, 2010. These documents included a treatment record, a "Return to Work Information" form, as well as a "Health Care Provider's Report." Appellant was diagnosed with lumbar pain and strain and instructed to refrain from lifting objects weighing greater than 10 pounds, as well as any significant stooping, bending, crouching, crawling or kneeling. These limitations were also included in the Return to Work Information Form.

By decision dated July 6, 2010, OWCP accepted that the May 22, 2010 incident occurred as alleged, but denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that he sustained an injury causally related to the accepted incident.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden to establish the essential elements of his 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, that an injury 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>3</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>4</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>5</sup>

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

<sup>5</sup> *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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>6</sup>

Section 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. As nurses, physician's assistants, physical and occupational therapists are not "physicians" as defined by FECA, their opinions regarding diagnosis and causal relationship are of no probative medical value.<sup>7</sup>

### ANALYSIS

OWCP accepted that the May 22, 2010 pushing incident occurred as alleged. The Board finds that appellant has not submitted sufficient medical evidence to establish that he sustained an injury causally related to this incident.

Appellant submitted records which indicate that he was treated for a back condition. The records he submitted were however all signed by Mr. Hayter. As a physician's assistant, Mr. Hayter is not a "physician" as defined under FECA.<sup>8</sup> His opinions are of no probative medical value.

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit sufficient medical documentation in response to OWCP's request. There is no probative, rationalized medical evidence of record to establish a firm diagnosis of appellant's back condition or that address how any back condition was caused by the employment incident. Appellant has not met his burden of proof to establish that he sustained a traumatic injury on May 22, 2010.

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.

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<sup>6</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>7</sup> *See Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>8</sup> Section 8101(2) of FECA defines the term "physician." Lay individuals such as physician's assistants are not competent to render a medical opinion. *See David P. Sawchuk*, 57 ECAB 316 n.11 (2006).

**CONCLUSION**

The Board finds that appellant failed to establish that he sustained an injury on May 22, 2010 while in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 6, 2010 is affirmed.

Issued: August 2, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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