

he was parking the post office long life vehicle (LLV) and bumped the curb. He did not stop work and first received medical care on November 20, 2009. Appellant notified his supervisor on November 28, 2009. The employing establishment controverted the claim alleging that he was not in the performance of duty.

In a November 20, 2009 discharge summary, Dr. Dan Spangler, a treating physician, reported that appellant was treated on an emergency basis for back pain.

By letter dated December 9, 2009, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In a November 20, 2009 emergency room report, Dr. Spangler reported that appellant complained of low back pain. Appellant stated that he ran into a curb with his truck on November 19, 2009. Dr. Spangler diagnosed chronic back pain.

In a December 18, 2009 medical report, Dr. Joel D. Pickett, Board-certified in neurological surgery, reported that appellant ran his truck into a curb in November 2009 and complained of intense lower back pain, as well as pain radiating down his legs since the date of the incident. He noted that appellant was neurologically intact and recommended a magnetic resonance imaging (MRI) scan to rule out an acute disc herniation or other acute change.

By decision dated January 12, 2010, OWCP denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained an injury. It found that the incident occurred as alleged; however, that the evidence failed to provide a firm medical diagnosis which could be reasonably attributed to the accepted employment incident.

On January 19, 2010 appellant, through his attorney, requested an oral hearing before an OWCP hearing examiner.

In support of his request, appellant submitted a claim for compensation (Form CA-7) requesting leave without pay for the period dated December 18, 2009 to January 9, 2010.

At the August 11, 2010 hearing, appellant testified that he was a postal employee for 18 years and sustained a herniated disc injury while at work on October 19, 2006, which resulted in permanent disability limitation, claim File No. xxxxxx541. He was receiving ongoing treatment for that injury, contemporaneous with his accident on November 19, 2009. Appellant stated that he filed a recurrence of his previous injury, which was denied by OWCP, but also filed a new claim because this accident caused his back to hurt again. He also testified that Dr. Pickett diagnosed him with an exacerbation of herniated disc. OWCP's hearing representative noted that the medical evidence of record only provided a diagnosis of pain and advised appellant as to the necessary medical evidence needed. The record was held open for 30 days.

By decision dated October 25, 2010, OWCP's hearing representative affirmed OWCP's January 12, 2010 decision. The hearing representative noted that the medical evidence of record

did not provide a diagnosis other than back pain and appellant failed to submit additional medical evidence after the August 11, 2010 hearing.²

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁶ 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

² OWCP’s hearing representative reported that appellant had filed 14 injury claims since April 25, 2003, 6 of which were related to his back and lower extremity. On April 25, 2003 appellant sustained a lower back injury when twisting to exit his truck. The claim was accepted for lumbar sprain, File No. xxxxxx266. On May 30, 2003 appellant filed a second traumatic injury claim when he experienced back pain while walking down stairs. The claim was accepted by OWCP, File No. xxxxxx722. On May 20, 2004 appellant filed a claim for injury to his lower back when picking up a tub of mail. The claim was accepted by OWCP, File No. xxxxxx315. On October 24, 2005 appellant filed a claim for injuring his lower back when loading mail into a truck. The claim was accepted for lumbar strain, File No. xxxxxx256. On August 2, 2006 appellant filed a traumatic injury claim for injuring his back while exiting his truck. The claim was denied by OWCP, File No. xxxxxx029. On October 19, 2006 appellant filed a traumatic injury claim for injuring his lower back when he twisted his back to avoid rolls of carpet falling on him when picking up mail. OWCP accepted the claim for lumbar strain which was later expanded to include herniated disc at L3-4, File No. xxxxxx541. Appellant missed time from work, returned with permanent restrictions and was given a modified position. On November 19, 2009 he claimed a recurrence of disability, File No. xxxxxx541 which was subsequently denied by OWCP.

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

The evidence establishes that the November 19, 2009 incident occurred as alleged when appellant was driving an LLV and bumped it into the curb. The issue, therefore, is whether he submitted sufficient medical evidence to establish that the employment incident caused a lower back injury. The Board finds that appellant did not submit sufficient medical evidence to support that he sustained a lower back injury causally related to the November 19, 2009 employment incident.⁸ The medical evidence is deficient on two grounds: (1) it fails to provide a firm diagnosis; and (2) there is no narrative opinion on causal relationship between a diagnosed condition and the employment incident.

In a November 20, 2009 report, Dr. Spangler reported that appellant was treated on an emergency basis for back pain when he ran into a curb with his truck on November 19, 2009. He diagnosed chronic back pain. Pain, however, is a symptom, not a compensable medical diagnosis.⁹ Dr. Spangler did not provide any kind of diagnosis or detail regarding appellant's medical condition. It becomes almost impossible to establish causal connection in appellant's claim because the physician has not identified a medical condition. Thus, Dr. Spangler's medical notes do not constitute probative medical evidence because they fail to provide a clear diagnosis and do not adequately explain the cause of appellant's injury.¹⁰

In a December 18, 2009 medical report, Dr. Pickett reported that appellant complained of intense lower back pain, as well as pain radiating down his legs when he ran his truck into a curb in November 2009. He noted that appellant was neurologically intact and recommended an MRI scan to rule out an acute disc herniation or other acute change.

The Board finds that the opinion of Dr. Pickett is not well rationalized. Dr. Pickett did not explain how the November 19, 2009 employment incident contributed to or caused appellant's lower back injury. He provided no medical history regarding appellant's prior back injuries and did not describe, explain or diagnose appellant's medical condition. Dr. Pickett failed to provide a firm medical diagnosis and made no mention of an exacerbation of appellant's herniated disc other than to recommend an MRI scan to rule out disc herniation. It becomes almost impossible to establish causal connection in appellant's claim because the physician has not identified a medical condition.

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ *See Robert Broome*, 55 ECAB 339 (2004).

⁹ *Id.*

¹⁰ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹² Thus, Dr. Pickett's medical report is insufficient to establish appellant's burden of proof.

At the August 11, 2010 hearing appellant testified that Dr. Pickett diagnosed him with an exacerbation of herniated disc. The record was held open for 30 days after the hearing but appellant failed to submit any medical evidence. Appellant's honest belief that work caused his medical problem is not in question. Belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record is without rationalized medical evidence from a physician establishing a diagnosed medical condition causally related to the accepted November 19, 2009 employment incident. Thus, appellant has failed to establish his burden of proof.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a traumatic injury on November 19, 2009 in the performance of duty.

¹¹ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹² See *Lee R. Haywood*, 48 ECAB 145 (1996).

ORDER

IT IS HEREBY ORDERED THAT the October 25, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 12, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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