

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

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D.C., Appellant )

and )

**DEPARTMENT OF HOMELAND SECURITY,  
TRANSPORTATION SECURITY  
ADMINISTRATION, West Palm Beach, FL,  
Employer**

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**Docket No. 11-146  
Issued: September 13, 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  
ALEC J. KOROMILAS, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 25, 2010 appellant filed a timely appeal from May 28 and October 31, 2010 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying his occupational injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> 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 that he developed a right inguinal hernia causally related to factors of his employment.

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

## **FACTUAL HISTORY**

On April 2, 2010 appellant, then a 44-year-old supervisory transportation security officer, filed an occupational disease claim (Form CA-2) alleging that he developed a hernia from the constant lifting of luggage and bags. He stated that he first became aware of his condition on June 6, 2008 and of its relationship to his employment on August 10, 2009. Appellant reported that he delayed filing his claim for approximately two years because he did not specifically know that he had a hernia.

Appellant stated that he went to the hospital and that the physician did not see the bulge protruding in his crotch. This resulted in dismissal of a prior claim.<sup>2</sup> Appellant noted continued pain and returned to the hospital in 2010 when he was diagnosed with a hernia. The employing establishment received notice of his alleged injury on April 2, 2010 and challenged his claim. Appellant's supervisor stated that he had no direct knowledge of a hernia nor had appellant ever complained or reported injuring himself. Appellant did not stop work.

By letter dated April 6, 2010, 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 letter of the same date, OWCP also requested additional factual information from the employing establishment.

In an undated letter, appellant reported that in 2007 or 2008 he went to the Veterans Administration Medical Clinic (VAMC) complaining of pain in his groin area. He stated that his primary care physician thought his pain could be a result of a hernia and referred him to Dr. Ernest Shwayri, a Board-certified surgeon, who did not detect any bulges and declared the provisional diagnosis of a hernia to be incorrect. Appellant stated that the pain became worse over time and the bulge became evidence under the skin. Upon returning to the emergency room in 2010, Dr. Shwayri diagnosed him with a hernia. Appellant explained that he did not file a claim earlier because he did not know that he had a hernia. He reported that he had been employed by the Department of Homeland Security for eight years. Appellant's duties often included lifting heavy bags which he believed caused or aggravated his hernia.

In a March 22, 2010 prescription note, appellant's physician reported that he was evaluated and scheduled for surgery on April 8, 2010.

By letter dated April 2, 2010, appellant reiterated that his injury occurred approximately two years earlier in 2008 and that a hernia was detected after returning to the hospital in 2010. He noted that he was scheduled for surgery on April 8, 2010 and repeated that his injury had been the result of his duties as a supervisory transportation security officer. In support of his statement, appellant submitted an official job description for a supervisory transportation security officer screener.

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<sup>2</sup> The appellant noticed groin pain in 2008 but was not diagnosed with a hernia until 2010.

In an April 16, 2010 prescription note, appellant's physician reported that appellant underwent surgery on April 8, 2010 and was limited to lifting no more than eight pounds until June 2010.

By decision dated May 28, 2010, OWCP denied appellant's claim finding that the medical evidence did not demonstrate that the hernia was causally related to the established work-related events.

In an undated letter, appellant requested reconsideration of OWCP's decision. He repeated his assertion that he had a hernia in 2007 and mistakenly thought it might have been an ilioinguinal sprain. Appellant further affirmed his belief that his misdiagnosed hernia was directly related to his employment.

In support of his request, appellant submitted medical records dated June 22, 2007 to April 16, 2010 from the VAMC. In a June 22, 2007 medical report, Darlene Papillion, a licensed practical nurse, reported that appellant was experiencing pain in the right groin. Upon physical examination, she noted that the prostate was soft nontender with mild bulging in the right groin upon coughing and she referred him to a surgery consult for a right inguinal hernia.

In a July 11, 2007 progress note, Dr. Shwayri reported that appellant occasionally experienced mild tenderness in the right inguinal suprapubic area after lifting. Upon examination of the inguinal regions, he detected no defect, bulge or hernia by cough, squatting or valsava.

In a March 4, 2010 progress note, Dr. Shabtab Karatela, Board-certified in internal medicine, reported that a right inguinal hernia had been present for the past two to three years and had become more prominent in the past month. He diagnosed appellant with a reducible right inguinal hernia and recommended surgical repair.

In a March 22, 2010 progress note, Dr. Shwayri confirmed that appellant was scheduled for a hernia repair on April 8, 2010. In an April 16, 2010 progress note, he reported that appellant's procedure went well and that he could return to work on April 23, 2010 but was to avoid lifting greater than eight pounds for eight weeks.

By decision dated October 13, 2010, OWCP denied modification of its May 28, 2010 decision on the grounds that the medical evidence of record failed to establish the causal relationship between the hernia and the related employment factors.

### **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 is causally related to the

employment injury.<sup>3</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.<sup>4</sup>

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.<sup>5</sup> 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 and 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 that causal relationship.<sup>6</sup> 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. 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.<sup>7</sup>

### ANALYSIS

OWCP accepted that appellant was engaged in lifting luggage repetitively in his employment activities as a supervisory transportation security officer. It denied his claim, however, on the grounds that the evidence failed to establish a causal relationship between those activities and his right inguinal hernia. The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a hernia causally related to factors of his employment as a supervisory transportation security officer.

In a July 11, 2007 progress note, Dr. Shwayri reported that appellant occasionally experienced mild tenderness in the right inguinal suprapubic area after lifting. Upon physical examination, he detected no defect, bulge, or hernia by cough, squatting or valsava. In his March 22, 2010 progress note, Dr. Shwayri diagnosed a right inguinal hernia and reported that appellant was undergoing surgery on April 8, 2010. His April 16, 2010 progress note stated that

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

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

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

<sup>7</sup> *James Mack*, 43 ECAB 321 (1991).

the procedure went well and that appellant should not lift greater than eight pounds and could return to work on April 23, 2010.

Dr. Shwayri did not determine that appellant's condition was work related and did not offer a rationalized opinion on the causal relationship between appellant's diagnosed condition and the factors of employment implicated in the claim.<sup>8</sup> While his July 11, 2007 medical report noted that appellant was experiencing tenderness in the right inguinal subrapubic area after lifting, he did not determine that this lifting was specifically a work-related activity or opine how appellant's employment would have caused this tenderness. That report tends to support that a diagnosed hernia did not exist at the time of appellant's 2007 examination. Though Dr. Shwayri provided a diagnosis, none of his reports mentioned a work-related cause or aggravation of appellant's hernia. The Board has held that 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.<sup>9</sup> Without medical reasoning explaining how appellant's employment factors caused the right inguinal hernia, Dr. Shwayri's report is insufficient to meet appellant's burden of proof.<sup>10</sup>

In a March 4, 2010 progress note, Dr. Karatela reported that appellant's right inguinal hernia had existed for the past two to three years but had become more prominent in the last month. He diagnosed a reducible right inguinal hernia. While Dr. Karatela diagnosed appellant's injury, he did not identify its cause and did not mention appellant's employment activities. Without medical reasoning explaining how appellant's employment factors caused his hernia, Dr. Karatela's report is insufficient to meet appellant's burden of proof.<sup>11</sup>

The remaining evidence of record does not establish that appellant sustained a right inguinal hernia causally related to his employment. The March 22 and April 16, 2010 prescription notes merely confirm that appellant had a hernia repair and provided his work restrictions. The prescription notes did not address the cause of appellant's injury. Further, progress notes from VAMC nurses, to the extent that they offer medical opinions, are of no probative value. Registered nurses, licensed practical nurses and physicians' assistants are not physicians as defined under FECA and medical opinions must be provided by physicians.<sup>12</sup>

Appellant's honest belief that work caused his medical problem is not in question. But that 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

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<sup>8</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>9</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>10</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>11</sup> *Id.*

<sup>12</sup> 5 U.S.C. § 8102(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.

evidence establishing a causal relationship between the accepted factors of employment and appellant's right inguinal hernia. Thus, appellant has failed to meet his burden of proof.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his right inguinal hernia is causally related to factors of his employment as a supervisory transportation security officer.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 31 and May 28, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 13, 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