



## **FACTUAL HISTORY**

On October 5, 2010 appellant, then a 52-year-old supervisory fire protection specialist, filed a traumatic injury claim alleging that, on October 5, 2010, while exiting Engine 16 with full protective gear, he twisted his back, walked it off, then took a five-gallon water container to the ship deck by stairs and further pulled his back. He also had trouble catching his breath as a result of the exertion. The employing establishment controverted the claim.

In a statement dated October 14, 2010, Michael T. Pope, a district fire chief stated that on October 5, 2010 he responded to a working ship fire aboard the USS Whidbey Island. He stated that, after the fire was out, he was exiting the ship for a meeting when he saw appellant standing at the rear of Squad 11 fire apparatus. Chief Pope noted that appellant stated that he hurt himself when he fell out of the fire truck on arrival and hurt his back and then “really did myself in” trying to carry a water cooler up onto the ship. He stated that appellant needed to be checked, but appellant responded that it was not that bad and that he would be okay. Chief Pope then informed Chief George W. Ridgwell, III and Chief Douglas R. VonWald that appellant stated that he hurt his back and Chief VonWald stated that there was more to it than Chief Pope was aware as appellant had left his company upon arrival and had never reported a back injury to him.

In an October 14, 2010 witness statement, Assistant Fire Chief Ridgwell stated that Chief VonWald approached him on October 5, 2010 and gave him details of the fire ground situation and also informed him that appellant stated that he twisted his back while exiting the engine. He noted that he was told that appellant was resting at the engine and appellant stated that he did not need medical treatment. Chief Ridgwell noted that they progressed through the incident and that appellant came over to the command post and stated that he felt alright but also noted that “he couldn’t do this anymore.” He had a medic evaluate appellant, who noted that appellant had an elevated blood pressure with no other complaints. Chief Ridgwell stated that appellant told him that he was going to his primary physician to be evaluated and departed at 0800 hours.

In October 20, 2010 statements, Chief VonWald stated that it was unusual to him that appellant, a supervisor, did not report his injury once it occurred. He was in contact with five supervisors that morning and it was not until after everything was done three hours later that the initial supervisor was notified that an employee had been injured performing his duties. Chief VonWald noted that he did not receive the paperwork from appellant’s doctor until October 11, 2010. He noted that appellant claimed a severe sprained back but it was not reported until three hours after it occurred and then he drove over four hours to seek medical treatment. In a separate statement concerning the events of October 5, 2010, Chief VonWald stated that upon arrival he assumed incident command and set up the command post and appellant came walking towards his vehicle in full protective gear and that he instructed appellant to report to Supervisory Captain Michael D. Scott. He noted that later he saw appellant and asked him what he was doing, and appellant told him that he really did not have an assignment, so he told appellant to assist the firefighters that were coming out from the fire space and assist with making sure the firefighters had fluids for replenishment available to them. Chief VonWald stated that, after several hours, the fire was declared out and the control scene was returned to the

ship's forces and that he exited the ship. He stated that Chief Ridgwell asked him to have R-15 personnel prepare a Prehospital Patient Care Report on appellant and record that he was provided medical treatment on the scene and that he refused transport to a medical facility for further evaluation. Chief VonWald indicated that appellant stated that he had to go to Maryland for treatment because it was the only place that his insurance would cover.

In an October 14, 2010 statement, Captain Jimmy French stated that on October 4, 2010 he was assigned to operations chief on the main deck of the ship. He stated that he needed equipment moved up from the staging area and saw appellant walk around the fire apparatus. Captain French called down directing appellant to bring water and cups up to the area for rehabilitation. He noted that appellant showed no problems nor stated whether he could perform the task or not, but that once appellant arrived on the main deck after walking up a flight of stairs, he noticed him holding the railing bent over and holding his chest. Captain French stated that he asked appellant if he was okay and appellant stated that he was okay and just needed a minute. He stated that appellant looked like he was having problems breathing and he asked appellant to sit down on the quarter deck while he got someone to attend to him. Captain French noted that Rescue 11 was up on the main deck dropping off equipment, so he had Firefighter Roberson escort appellant down to rehabilitation to be checked out and that from this point he had no more contact with appellant.

In an October 14, 2010 statement, Supervisory Captain Scott noted that, on October 5, 2010, he was walking with appellant to quarter deck par 3 and that when he took a personal par count he realized that appellant was no longer with him, and when he looked over the port side of the ship he observed appellant walking in full turn out gear and SCBA towards the command post. He noted that he called command and asked him to redirect appellant back to his company and that, when he did not get a reply, he continued the job and had no other communications with appellant until the incident was secured. Captain Scott indicated that he was at the command post gathering passports which appellant approached him and stated that he was sorry for letting the company down. He noted that appellant then stated that he hurt his back getting off the apparatus upon arrival. Captain Scott stated that at no time during the incident did appellant advise him of the injury.

In an October 5, 2010 workers' compensation form, appellant noted that he was exiting Engine 16 in full protective gear when he twisted back. He noted that he refused transport to the hospital.

Appellant was seen by Dr. Thomas M. Walsh, a Board-certified family practitioner, on October 5, 2010, for pain in his low back. Dr. Walsh advised that appellant was to be off work for a week and then be rechecked before return to full-work duty. He listed the context of the injury as fell off fire truck, he noted the pain had gradual onset. In an October 11, 2010 report, Dr. Walsh noted that appellant had generalized anxiety and low back pain. In an October 25, 2010 report, he noted pain in the low back and shortness of breath.

In a November 19, 2010 decision, OWCP denied appellant's claim finding that the traumatic incident did not occur. It noted that he failed to respond to written questions and that the statements of several witnesses cast doubt on the validity of his claim.

An October 28, 2010 magnetic resonance imaging (MRI) scan was interpreted by Dr. George W. Adams, a Board-certified radiologist, as showing right paracentral/intraforaminal disc herniation at L5-S1 superimposed on a broad bulge; bulging discs elsewhere from L2-S2 through L4-5; and large Schmorl's node in the superior end plate of L5.

In a November 9, 2010 attending physician's report, Dr. Walsh obtained a history that appellant fell off a truck and sustained an injury to his back. He listed the diagnosis as lumbago, and indicated that this condition was caused or aggravated by the employment activity because the symptoms were consistent with injury he described. Dr. Walsh noted that appellant was originally seen on October 5, 2010 and was advised to take a week off from work. Appellant returned to work on October 11, 2010 with continued symptoms and on October 25, 2010 had new symptoms at work of exertional dyspnea and radiating pain to the left leg. Dr. Walsh referred appellant to a cardiologist. In a November 15, 2010 attending physician's report form, he indicated that, while the initial findings were subjective, eventually it was determined that appellant had a herniated lumbar disc. Dr. Walsh also noted that appellant had coronary artery disease. He indicated that these conditions were caused or aggravated by activity and explained "consistent with injury." Dr. Walsh noted that appellant would be admitted on November 18, 2010 for coronary artery bypass surgery, so treatment of the herniated disc had been postponed.

Dr. Dennis Hall, a Board-certified internist in cardiovascular disease, first saw appellant on November 2, 2010 for dyspnea on exertion. He noted that appellant's risk factors for coronary artery disease include a very long history of smoking and some degree of emphysema which may be contributing to his symptom complex. Dr. Hall conducted various tests. On November 8, 2010 an abnormal Dipyridamole myocardial perfusion examination showed a moderate-sized perfusion defect in the inferior and apical segments with a mild reversibility. Dr. Hall noted an inferior wall was akinetic with an estimate EF of 55 percent. He recommended a coronary angiography. On November 18, 2010 appellant underwent bypass surgery. In a report dated December 9, 2010, Dr. Hall noted that appellant was stable.

On December 18, 2010 appellant requested review of the written record by an OWCP hearing representative. He stated that he never received a request for further information. Appellant noted that on October 5, 2010 at approximately 0400 hours a box alarm was struck coming from a ship. He was riding in the right jump seat of the first engine, Engine 16, and had all of his personal protective equipment (PPE) on which weighed approximately 30 pounds and an air pack that weighed about 30 pounds. Appellant stated that, while exiting the apparatus, he lost his footing and to avoid falling he grabbed a pull bar and twisted his back. He stated that the remaining crew was already enroute to the ship and had no idea what had happened. Appellant walked the pain off but after about 5 minutes it was still there but not as severe as the initial pain. He noted that he was instructed by Captain French to take a five-gallon water cooler which weighed approximately 40 pounds to the ship's deck for the firefighters, and that while walking up the ship's narrow steps he hit a step that wobbled and once again pulled his back. Appellant stated that, when he made it to the deck, he could not catch his breath and took 15 to 20 minutes to breath normally again. He indicated that Captain French did ask if he was okay and he thought at the time that he needed just a few minutes to catch his breath but that this was not the case as it took 15 to 20 minutes to breath normally again. Appellant stated that he sat on the rear step and that, once the fire was under control, he made his way to the command post and spoke

to District Chief Pope and Incident Commander Chief Ridgwell and explained that he had injured himself and that Chief Ridgwell sent him to the ambulance crew for evaluation. He stated that he subsequently refused transport because he wanted to see his primary care physician and not an emergency room doctor. Appellant stated that he has been an incident commander for over 20 years and due to the amount of fire upon arrival, he knew the incident commander was very busy with the operation of the fire ground and opted to wait until the fire was under control to make the notifications.

In a December 14, 2010 report, Dr. Hall summarized his treatment of appellant, noting that he first saw him on November 2, 2010 for evaluation of dyspnea on exertion, noting that appellant first experienced severe shortness of breath while walking a flight of stairs and carrying a pail of water. He noted that appellant had coronary artery bypass surgery on November 18, 2010 and was recovering well.

In a December 17, 2010 note, Dr. Walsh stated that appellant suffered a work injury on October 5, 2010 and was seen in his office the same day with back pain consistent with the story of his injury. He noted that an MRI scan of appellant's lumbosacral spine was eventually done which showed a herniated L5-S1 disc consistent with his symptoms. Dr. Walsh indicated that unfortunately, in the process of this work up appellant developed symptoms of dyspnea and was referred to a cardiologist, and was admitted to the hospital for urgent coronary artery bypass surgery and that he was currently recovering from that surgery. He noted that appellant still has back pain and right leg radiculopathy but that whole issue has taken a back seat to more pressing cardiac issues. Dr. Walsh stated that once appellant had recovered from the heart issues the back and leg issues will need to be addressed. He stated, "It is nearly impossible to prognosticate the back problem until [appellant] is adequately evaluated."

In a March 21, 2011 statement, Assistant Chief VonWald indicated that he was the shift supervisor for the 24-hour shift that started 0700 on October 4, 2010. He noted that appellant was assigned to the right jump seat on Engine 16 at JEB Little Creek same day. Chief VonWald stated that appellant's PPE and SCBA pack combined weighed less than 50 pounds. He stated that appellant never mentioned to Captain Scott that he injured his back while exiting the apparatus, and that appellant is a supervisor and knew to report injuries immediately and that appellant conducted annual training for his employees each year on this topic. Chief VonWald stated that appellant was in face-to-face communication with three other supervisors from the time he alleged he hurt his back to when he actually reported the injury to Chief Ridgwell, and that, if he was injured and did not report it, this could have placed the lives of his fellow firefighters at risk. He indicated that, after the injury was reported, appellant stated that he was going to see his doctor in Maryland because that is where his insurance was and that the doctor had already been called. Chief VonWald contended that the congestive heart failure was not related to the alleged incident. He stated that appellant's back injury prevented him from returning to work for one week. Chief VonWald stated that appellant did not submit supporting medical documentation to the employing establishment until a week after he was injured and was not in contact with his supervisor.

By decision dated April 26, 2011, the hearing representative affirmed OWCP's decision of November 19, 2010, as modified. The hearing representative found that appellant did not

meet his burden of proof to establish the occurrence of the claimed twisting incident while exiting the vehicle or that he injured his back while carrying a water cooler onto the ship. With regard to the claimed difficulty breathing following exertion, the hearing representative determined that the medical evidence failed to establish that the diagnosed coronary artery disease was causally related to any factors of employment.

### **LEGAL PRECEDENT**

OWCP's 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.<sup>2</sup> An employee seeking benefits under FECA<sup>3</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 was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<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. 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. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>5</sup>

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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

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<sup>2</sup> 20 C.F.R. § 10.5(e).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>5</sup> *Id.*

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>

### ANALYSIS

Appellant filed a claim for compensation alleging that, on October 5, 2010, while exiting Engine 16 with full protective gear, he twisted his back. He noted that his back injury was further aggravated when he took a 5-gallon water container to ship deck. Appellant further noted that he had trouble catching his breath because of the exertion.

With regard to the alleged back injury, OWCP determined that appellant had not met the initial criterion of proving that the incident occurred as alleged. Appellant's statement, although entitled to great weight, is contradicted by numerous statements from his supervisors. He alleged that he sustained his back injuries while reporting to fight a fire aboard the USS Whidbey Island. Appellant noted that he was first injured while getting out of the fire truck upon arrival and further injured as a result of carrying a water cooler onto the ship. However, he delayed several hours before reporting the alleged back injury to a supervisor. Appellant alleged that the delay was due to the fact that supervisors were busy fighting the fire. Although his explanation does merit some consideration, the Board notes that appellant was a fire chief. Appellant had supervisory duties and pursuant to the statement by Chief VonWald, he conducted annual training with regard to reporting injuries promptly. Chief VonWald stated that appellant was aware that failure to promptly report injuries could result in a situation where he placed the lives of his fellow firefighters at risk. He stated that appellant did not report the injury until three hours after it occurred. Chief VonWald also indicated that appellant elected to drive four hours to see his doctor in Maryland instead of seeing a local doctor. Other fire chiefs also noted that appellant did not make a prompt report of injury. Chief Pope indicated that, after the fire was out, he saw appellant who at that time stated that he hurt his back by falling out of the fire truck when responding to the fire. Chief Ridgwell noted that he had a medic evaluate appellant and that he noted elevated blood pressure but no other complaints. Captain French indicated that he was assigned to operations chief on the main deck of the ship and that he called to appellant to bring water and cups to the area, and that appellant showed no problems with his back nor did he state that he could not perform the task when asked. Captain Scott also noted appellant's untimely reporting of the injury.

When treated by Dr. Walsh on the date of the alleged injury, appellant reported that he injured his back when he fell off of a truck. Dr. Walsh reiterated this history in his November 9, 2010 report. This history of injury contradicts or is inconsistent with that reported on the claim form.

The Board finds that, as appellant was a fire chief and knew the requirements for the prompt reporting of the injury, as appellant did not promptly report the injury and as he provided an inconsistent history of his alleged back injury, there is sufficient doubt as to whether appellant

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<sup>6</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

actually sustained a back injury as alleged. Accordingly, appellant has not met his burden of proof to show that the work incident with regard to the injury to his back occurred as alleged.

The Board further finds that there is evidence that appellant had breathing issues while working the fire on October 5, 2010. Appellant noted on his claim form that he had trouble catching his breath on that date as a result of exertion. In a subsequent statement, he indicated that after carrying a five-gallon water cooler that weighed approximately 40 pounds up the steps he could not catch his breath and it took 15 to 20 minutes to breath normally again. The statement of Captain French supports appellant's assertion. He noted that, after appellant walked up a flight of steps, he noticed appellant bent over a railing and holding his chest. Captain French noted that it appeared that appellant was having problems breathing, and that he told appellant to sit while he got someone to attend to him. Accordingly, appellant established that the work incident occurred.

Appellant has not met his burden of proof to establish that he sustained an injury as a result of the work-related breathing issue. To meet his burden of proof, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.<sup>7</sup> Appellant's treating cardiologist, Dr. Hall, noted that he initially saw appellant for dyspnea on exertion, and noted that appellant first experienced severe shortness of breath while walking a flight of stairs and carrying a pail of water. Appellant underwent coronary artery bypass surgery on November 18, 2010. However, when discussing risk factors, Dr. Hall noted appellant's very long history of smoking. He never indicated that appellant's heart condition was caused or aggravated by his federal duties. Although Dr. Walsh notes appellant's heart condition, his reports largely address appellant's back injury and he does not discuss the cause of appellant's coronary artery disease. Accordingly, appellant has not submitted medical evidence sufficient to establish that his work activities on October 5, 2010 caused his coronary artery disease, and therefore he has not met his burden of proof to establish an injury sustained in the performance of duty.

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 he was injured in the performance of duty on October 5, 2010, as alleged.

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<sup>7</sup> *J.G.*, Docket No. 11-875 (issued January 13, 2012).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 26, 2011 is affirmed as modified.

Issued: April 16, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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