

FACTUAL HISTORY

On August 10, 2011 appellant, then a 45-year-old mail handler, filed a traumatic injury claim alleging that on August 6, 2011 he hurt his neck and back when he lifted heavy mail trays from the bottom of the general purpose mail container (GMPC) at work. He stopped work on August 10, 2011.

On August 10, 2011 the employing establishment issued a Form CA-16, authorization for examination and/or treatment to the Edge Family Chiropractic Practice.

In an August 10, 2011 disability note, Dr. David A. Edge, a chiropractor, authorized appellant to remain off work for one day.

In an August 12, 2011 statement, the employing establishment controverted appellant's claim.

On August 17, 2011 OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional evidence.

In a May 9, 2011 report, Dr. Edge stated that on August 6, 2010 appellant was injured in a motor vehicle accident when his truck was rear-ended. Dr. Edge explained that during the accident appellant sustained a hyperextension, hyperflexional trauma into the cervicothoracic and lumbosacral areas of his spine and diagnosed chronic cervicobrachial syndrome, persistent cervical and lumbar myofascial strain/sprain and residual lumbar facet syndrome/injury. He explained that despite his best treatment, appellant sustained permanent injuries from the August 6, 2010 event and noted that appellant reached maximum medical improvement on May 6, 2011.³

In August 11, 2011 attending physician and duty status reports, Dr. Edge stated that on August 6, 2011 appellant sustained an acute injury to his back when he lifted trays of oversized letters and noted that he was disabled from work until August 25, 2011.

In a handwritten statement, appellant explained that he worked as a mail handler and that on August 6, 2011 he loaded 10 heavy and overloaded mail trays from the GMPC. When he bent over and picked up a tray from the bottom, he hurt his back and neck. Appellant continued to work, even though he struggled, but when the pain continued for a few days he told his supervisor. He submitted a description of his position and various statements from coworkers who either witnessed or were told that appellant hurt his back on August 6, 2011 when he picked up a tray of mail at work.

Appellant submitted various chiropractic progress notes dated from October 27, 2010 to May 6, 2011 regarding the treatment for his back condition following the August 6, 2010 automobile accident.

³ Dr. Edge also concluded that, based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had a 10 percent whole person impairment as it related to his August 2010 traumatic injury.

In an August 11, 2011 report, Dr. Edge noted appellant's complaints of lower to mid-back pain following an August 6, 2011 lifting incident at work when he lifted overloaded trays from the bottom portion of a mail container. Appellant felt that he aggravated and exacerbated his previous back injury from the automobile accident. The examination revealed frank edematous inflammation in the L2-S1 flanks and L5 capsulitis. Dr. Edge observed Farman's, Kemp's, Minor's and Milgram's present with 1+ to 2 Lasegue's. Lumbar range of motion was flexion at 25 to 30 degrees, extension to neutral posture, rotation to no further than 10 degrees, and side bending no further than 10 degrees. Dr. Edge provided diagnoses codes of 846.0, 724.8, 724.3, 847.2 and 728.85.⁴ He reported that appellant's findings were consistent with a bend, lifted, twisted posture and that there was no other explanation to explain these objective findings. Dr. Edge further opined that the injury appeared to be an acute injury superimposed on the old one.

In August 25 and September 2 and 9, 2011 disability slips, Dr. Edge indicated that appellant was unable to work from August 25 to September 16, 2011.

Appellant submitted various chiropractic progress notes by Dr. Edge dated August 12 to 31, 2011. He noted that appellant's lifting-related workers' compensation injury was symptomatic when he tried to perform any bending movement. Dr. Edge related appellant's complaints of bilateral lower back pain with stiffness, inflammation in the facets, and upper buttock and upper leg pain and inability to return to work. Examination revealed myofascitis in the deep L3-5 flanks and guarded lumbar flexion. Dr. Edge explained his medical treatment and noted that appellant's upper lumbar spine appeared to be strengthening more than the greatest site of injury surrounding L5.

In a September 13, 2011 letter, the employing establishment controverted appellant's claim on the grounds of performance of duty and causal relationship.

In a decision dated September 19, 2011, OWCP denied appellant's claim on the grounds of insufficient medical evidence. It accepted that the August 6, 2011 incident occurred as alleged and that appellant sustained a diagnosed back condition but denied his claim finding insufficient evidence to establish that his back condition was causally related to the August 6, 2011 employment incident.

In a September 16, 2011 disability slip, Dr. Edge authorized appellant to remain off work until September 16, 2011. Appellant also submitted disability slips dated August 10, 2010 to May 4, 2011 indicating that he was disabled from work prior to the August 6, 2011 employment incident.

On September 22, 2011 appellant submitted a request for reconsideration. He expressed his frustrations with workers' compensation procedures and stated that his doctor's findings would substantiate his claim. Appellant resubmitted Dr. Edge's August 11, 2011 duty status and attending physician reports.

⁴ These codes reflect diagnoses of lumbosacral strain, other back symptoms, lumbosacral neuritis, lumbar sprain and hypermobility syndrome.

By decision dated October 29, 2011, an OWCP hearing representative denied modification of the September 19, 2011 denial decision finding that the medical evidence was insufficient to establish that he sustained a back injury in the performance of duty.

Appellant submitted various progress notes by Dr. Edge dated from August 11 to September 30, 2011. He related appellant's complaints of lower to mid-back pain following an August 6, 2011 employment incident when he lifted an overloaded mail tray from the bottom portion of a mail container. Dr. Edge observed parasacral, mild to moderate inflammation and some facet radiculopathy from L2-1 and related the medical treatment he provided.

On November 3, 2011 appellant submitted a request for reconsideration. He stated that he was examined by Dr. Jeff L. Buchalter, Board-certified in pain medicine, and enclosed a copy of his findings.

In an October 25, 2011 report, Dr. Buchalter examined appellant for a follow-up evaluation of an August 6, 2010 motor vehicle accident. He related appellant's medical treatment following the automobile accident and noted his continued severe neck and back pain. Appellant also stated that he had a work-related accident when he lifted a tray of heavy mail, which caused increased back pain. Upon examination of his cervical spine, Dr. Buchalter observed decreased range of motion in flexion and extension with bilateral paraspinal spasm tenderness. Examination of the lumbar spine revealed decreased range of motion flexion and extension with left-sided paraspinal trigger points. Appellant also complained of pain on deep palpation of the lower lumbar facet joint complex bilaterally. Dr. Buchalter diagnosed status post vehicle accident with cervical and chronic low back pain and a work-related injury with exacerbation of preexisting condition. He recommended appellant receive a lumbar epidural injection due to intractable back pain and that appellant continue light duty for four weeks.

Appellant submitted chiropractic progress notes by Dr. Edge dated from September 23 to October 7, 2011. He noted improvement of appellant's back condition but still observed lingering lumbopelvic myofascial tautness, inflammation, soft-tissue involuntary jump sign, and compressionary findings toward the iliac crest. Dr. Edge related appellant's treatments and noted that he neared the end of his approved visits.

In a decision dated November 28, 2011, OWCP denied appellant's request for reconsideration finding that the evidence submitted did not meet the requirements warranting merit review under 5 U.S.C. § 8128.

Appellant resubmitted the November 3, 2011 letter requesting reconsideration and other medical evidence previously of record.

In a January 4, 2012 report, Dr. Buchalter examined appellant for a follow evaluation of a work-related August 2011 back injury and an August 6, 2010 work-related motor vehicle accident. Examination of the lumbar spine revealed markedly decreased range of motion flexion and extension with bilateral paraspinal spasm. Dr. Buchalter diagnosed lumbar degenerative disc disease with probable discogenic pain and recommended lumbar discography with postdiscography computer tomography (CT) scan.

In a February 27, 2012 report, Dr. Buchalter stated that appellant underwent lumbar discography following a motor vehicle accident resulting in intractable back pain. He noted diagnoses of lumbago sciatica due to displacement of lumbar intervertebral disc, lumbar spondylosis, sciatica and lumbar internal disc disruption.

In an April 20, 2012 letter, appellant requested reconsideration. He explained the difficulties of finding a doctor who would take workers' compensation until he located Dr. Buchalter. Appellant brought OWCP's denial decision to his appointment for Dr. Buchalter to review and pointed out that Dr. Buchalter clearly diagnosed lumbar degenerative disc disease.

In an April 13, 2012 report, Dr. Buchalter noted appellant's complaints of low back and bilateral leg pain since an August 6, 2010 motor vehicle accident. He reviewed appellant's history and conducted an examination. Dr. Buchalter observed that appellant's lumbar range of motion was intact but he complained of pain on flexion and when getting up out of a chair. He noted preserved lumbar lordosis without fracture or malalignment and mild facet hypertrophy at L5-S1. Magnetic resonance imaging (MRI) scan of the lumbar spine revealed a fairly subtle but real disc injury at L4-5 with bilateral foraminal stenosis due to far lateral disc bulging. Dr. Buchalter diagnosed mild degenerative joint disease at L5-S1 and lumbar stenosis.

Appellant submitted an April 17, 2012 letter from his employing establishment which advised him that he was approved for disability retirement and various notes indicating that he was scheduled for surgery on April 25, 2012.

By decision dated May 29, 2012, OWCP denied modification of the September 19, 2011 denial decision finding that the medical evidence failed to establish that he sustained a back condition as a result of the August 6, 2011 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative, and substantial evidence⁶ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.⁸ 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

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁷ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

incident at the time, place and in the manner alleged.⁹ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.¹⁰ An employee may establish that the employment incident occurred as alleged but fail to show that his disability or condition relates to the employment incident.¹¹

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence providing a diagnosis or opinion as to causal relationship.¹² 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.¹³ The weight of the 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.¹⁴

ANALYSIS

The record reflects that appellant sustained a previous back injury as a result of an August 6, 2010 motor vehicle accident. On August 10, 2011 he filed a traumatic injury claim alleging that on August 6, 2011 he hurt his neck and back when he lifted heavy mail trays at work. OWCP accepted that the August 6, 2011 incident occurred as alleged and that appellant sustained a diagnosed back condition but found that the medical evidence failed to establish that his current back condition was causally related to or exacerbated by the accepted incident. The Board finds that he failed to meet his burden of proof to provide sufficient medical evidence demonstrating that he sustained a back condition or aggravated a preexisting back condition as a result of the August 6, 2011 employment incident.

Appellant submitted several medical reports by Dr. Buchalter who treated appellant for status post vehicle accident with cervical and chronic low back pain and a work-related injury with exacerbation of preexisting condition. He related that appellant was involved in an August 6, 2010 motor vehicle accident and that he also complained of a work-related lifting injury on August 6, 2011 when he lifted a tray of heavy mail and experienced back pain. Examination of the lumbar spine revealed decreased range of motion flexion and extension with left-sided paraspinal trigger points. Dr. Buchalter diagnosed lumbar degenerative disc disease with probable discogenic pain, lumbago sciatica due to displacement of lumbar intervertebral disc, lumbar spondylosis, sciatica, and lumbar internal disc disruption. The Board notes that

⁹ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

¹⁰ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹² *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹³ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹⁴ *James Mack*, 43 ECAB 321 (1991).

Dr. Buchalter provides a diagnosed medical condition and accurately describes the August 6, 2011 employment incident. He also mentions the August 6, 2010 motor vehicle accident and indicates that the August 6, 2011 work incident was an exacerbation of the preexisting condition. Dr. Buchalter does not, however, provide any explanation or medical rationale for how appellant's current back condition was caused or aggravated by the August 6, 2011 employment incident. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁵ Thus, the Board finds that Dr. Buchalter's opinion is of limited probative value on the issue of causal relationship because he does not explain how the August 6, 2011 employment incident caused or exacerbated his diagnosed back condition.

Appellant also provided several reports and progress notes from his chiropractor, Dr. Edge. Section 8101(2) of FECA provides that the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct subluxation as demonstrated by x-ray to exist.¹⁶ Dr. Edge provided diagnoses codes of 846.0, 724.8, 724.3, 847.2 and 728.85, which refer to diagnoses of lumbosacral strain, other back symptoms, lumbosacral neuritis, lumbar sprain and hypermobility syndrome. Since Dr. Edge did not diagnose a spinal subluxation based on an x-ray, he is not considered a physician under FECA and his opinion is of no probative value.¹⁷

Appellant contends on appeal that his doctor clearly provided a diagnosis of degenerative disc disease and stated that his injury was exacerbated from a preexisting injury. As previously noted, however, while Dr. Buchalter provided a diagnosed back condition and stated that appellant exacerbated his preexisting back condition, he failed to provide any medical rationale or explanation to support his opinion. Thus, his reports are insufficient to establish appellant's claim. Accordingly, the Board finds that appellant did not meet his burden of proof to establish his claim as he failed to provide sufficient medical evidence demonstrating that his current back condition was causally related to or aggravated by the August 6, 2011 employment incident.¹⁸

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.

¹⁵ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (February 6, 2009).

¹⁶ 5 U.S.C. § 8101(2); *see also E.W.*, Docket No. 09-6 (issued February 17, 2009); *George E. Williams*, 44 ECAB 530 (1993).

¹⁷ *T.B.*, Docket No. 12-244 (issued June 8, 2012).

¹⁸ The employing establishment's authorization for medical examination and/or treatment created a contractual obligation to pay for the cost of necessary medical treatment regardless of the action taken on the claim. *See Kimberly Kelly*, 51 ECAB 582 (2000). OWCP has not addressed the issue of authorization of medical expense pursuant to this Form CA-16 of record.

CONCLUSION

The Board finds that appellant did not establish that his back condition was causally related to or aggravated by the August 6, 2011 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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