



## **FACTUAL HISTORY**

On March 14, 2008 appellant, a 48-year-old waiter, filed a claim for benefits alleging that she strained her lower back while lifting a trash bag on March 13, 2008.<sup>2</sup> The record reflects that she did not lose time from work. On December 2, 2008 appellant filed a claim for a recurrence of disability commencing November 11, 2008.

By letter dated December 3, 2008, OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive medical report from a treating physician describing her symptoms and diagnosis and an opinion as to any diagnosed condition causally related to her federal employment. Appellant did not respond.

By decision dated January 16, 2009, OWCP denied appellant's claim, finding that she failed to submit sufficient medical evidence in support of her claim that she sustained a lower back strain in the performance of duty on March 13, 2008.

In a January 6, 2009 report, received by OWCP on January 20, 2009, Dr. Daniel M. Peterson, Board-certified in orthopedic surgery, noted that appellant experienced pain in her lower back on March 13, 2008 when she picked up a trash bag and threw it into a trash can. He advised that she walked very slowly, with a limp and appeared to be in pain. Dr. Peterson diagnosed a lumbosacral strain and opined that there was greater than a 51 percent probability that this condition was directly related to her employment duties. He noted the normal facets on magnetic resonance imaging (MRI) scan testing but no clear herniated disc with narrowing of the neural foramina at L5-6, which might be leading to radicular symptoms.

Dr. Peterson submitted progress reports dated January 7, 19 and 23, 2009 in which he reiterated his previous findings and conclusions and diagnosed lumbar radiculopathy, lumbar strain and lumbar disc degeneration.

On January 23, 2009 appellant requested an oral hearing.

In a January 26, 2009 report, Dr. Peterson stated that, based on his examinations, reports of an MRI scan and the medical records, appellant had a degenerative lumbar condition which was exacerbated by a specific lifting injury at work. He advised that although she had no symptoms prior to that time, she experienced persistent and worsening symptoms ever since. Dr. Peterson stated that the results of an MRI scan showed bilateral advanced foraminal stenosis with right-sided radiculopathy. Appellant also had pain, numbness and weakness in the right L5 nerve root. Dr. Peterson reiterated that there was a causal relationship between her diagnosed conditions and the March 13, 2008 lifting incident.

In a September 3, 2008 report, received by OWCP on February 9, 2009, Dr. Kenneth D. Finn, Board-certified in physical medicine and rehabilitation, related appellant's history of injuring her lower back while lifting a trash bag at work. He related complains of constant,

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<sup>2</sup> Appellant was treated on March 14, 2008 at the Air Force Academy Hospital and diagnosed lumbago. She was returned to light-duty work.

severe right-sided lumbar pain which fluctuated in severity, radiating to the hip, buttock and groin. Dr. Finn diagnosed lumbosacral spinal pain, lumbar spondylosis and right sacroiliac joint dysfunction and recommended work restrictions.

By decision dated March 26, 2009, an OWCP hearing representative set aside the January 16, 2009 decision. The hearing representative found that while Dr. Peterson's reports were not sufficient to establish that appellant's diagnosed lower back conditions were causally related to her March 13, 2008 work incident, they were sufficient to remand the case to obtain a supplemental opinion from Dr. Peterson to clarify whether she had a low back condition causally related to the March 13, 2008 work incident.

In an April 29, 2009 report, Dr. Roger D. Sung, a Board-certified orthopedic surgeon, stated that appellant underwent an MRI scan on April 22, 2009 which showed: disc degeneration at L4-5 and L5-6; and mild bilateral neural foraminal stenosis at L4-5 and L5-6; and right sacroiliitis.

By letters dated May 12 and August 4, 2009, OWCP asked Dr. Peterson to submit a supplemental report clarifying his opinion regarding a causal relationship between appellant's diagnosed lower back conditions and the March 13, 2008 work incident. Dr. Peterson did not respond to the inquiries.

By decision dated September 8, 2009, OWCP denied modification.

On September 22, 2009 appellant requested an oral hearing, which was held on January 22, 2009.

In a February 4, 2010 report, Dr. W. Rafer Leach, Board-certified in emergency medicine, indicated that appellant had injured her lower back while lifting a large, heavy trash bag and throwing it into a large trash can. He also noted that she injured her back in a nonwork-related automobile accident in August 2008, which worsened her condition. Dr. Leach opined that, within a reasonable degree of medical probability, he would apportion 100 percent of appellant's back pain to her 2008 work-related injury and 80 percent to the second accident as it related to her radiculitis.

By decision dated April 6, 2010, an OWCP hearing representative affirmed the September 8, 2009 decision. She found that Dr. Leach noted that appellant had sustained injuries to her back in a nonwork-related automobile accident as well as the March 13, 2008 work incident. Further, Dr. Leach provided no medical rationale explaining how any of the diagnoses were causally related to the March 14, 2008 work incident as opposed to the nonaccepted August 2008 work incident.

By letter dated April 6, 2011, appellant's attorney requested reconsideration.

In an April 2, 2011 report, Dr. Leach clarified that he had diagnosed the following conditions as causally related to the March 13, 2008 work incident: lumbar intervertebral disc

disruption with radiculitis; traumatic lumbar spondylosis; and sacroiliitis and piriformis pain. With regard to the occurrence of the March 13, 2008 work incident, he stated:

“The mechanism of injury is consistent with the diagnoses of traumatic intervertebral disc disruption with radiculitis as well as traumatic lumbar spondylosis as well as sacroiliitis. The mechanism of injury -- the lifting of a 50-pound bag to waist level, then twisting to the left from waist level to shoulder height and throwing the object -- clearly recreates the components of compression and rotation and torque which are responsible, within a reasonable degree of medical probability, for the disc and posterior column injury to [appellant’s] lumbar spine that are included in the diagnoses of lumbar intervertebral disc disruption with radiculitis, traumatic lumbar spondylosis and sacroiliitis. In addition, the medical record documents examination findings in the months after the March date of injury, but before the August date of injury, that are consistent with the diagnoses of lumbar intervertebral disc disruption, traumatic lumbar spondylosis and sacroiliitis.”

Dr. Leach stated that, while appellant experienced similar symptoms as a result of the August 2008 automobile injury, this was merely an aggravation of the initial March 13, 2008 work injury. He opined that he would apportion 100 percent of his lower back diagnoses to the March 13, 2008 employment injury.

By decision dated July 8, 2011, OWCP denied modification of the April 6, 2010 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing that 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.<sup>4</sup> 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>5</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. 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>6</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to

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<sup>3</sup> 5 U.S.C. § 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

establish that the employment incident caused a personal injury.<sup>7</sup> 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 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>8</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>9</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>10</sup> Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence.

### ANALYSIS

The Board finds that this case is not in posture for decision. Further development of the medical evidence is warranted.

In the instant case it is not contested that appellant experienced lower back pain while lifting a trash bag in the performance of duty on March 13, 2008. The issue is whether she submitted medical evidence sufficient to establish that the alleged lower back condition and disability were causally related to the March 13, 2008 work incident. In his April 2, 2011 report, Dr. Leach advised that the mechanism of injury, the lifting of a 50-pound bag to waist level, then twisting to the left from waist level to shoulder height and throwing the object, clearly described the components of compression and rotation and torque which were responsible, within a reasonable degree of medical probability, for the disc and posterior column injury to appellant's lumbar spine. He opined that, as a result of this incident, she had sustained the diagnosed conditions of lumbar intervertebral disc disruption with radiculitis, traumatic lumbar spondylosis and sacroiliitis.

The Board finds that Dr. Leach's April 2, 2011 report is generally supportive of appellant's claim. Although this report does not provide a complete medical history and is therefore not sufficiently rationalized to establish that the conditions he diagnosed were sustained

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<sup>7</sup> *Id.* For a definition of the term "injury" see 20 C.F.R. § 10.5(a)(14).

<sup>8</sup> *Id.*

<sup>9</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>10</sup> *Id.*

when she lifted the bag of trash on March 8, 2008, the Board finds that it is sufficiently supportive of her claim that further development of the evidence is warranted.<sup>11</sup>

Proceedings under FECA are not adversarial in nature nor is OWCP a disinterested arbiter.<sup>12</sup> While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>13</sup> The Board will set aside OWCP's July 8, 2011 decision and remand the case for further development of the medical evidence. Following such further development of the case record as it deems necessary, OWCP should issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 8, 2011 decision of the Office of Workers' Compensation Programs is set aside and remanded for further action consistent with this opinion.

Issued: July 6, 2012  
Washington, DC

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>11</sup> *Supra* note 5; *see also Cheryl A. Monnell*, 40 ECAB 545 (1989); *Bobby W. Hornbuckle*, 38 ECAB 626 (1987); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>12</sup> *Phillip L. Barnes*, 55 ECAB 426 (2004).

<sup>13</sup> *Donald R. Gervasi*, 57 ECAB 281(2005); *William B. Webb*, 56 ECAB 156 (2004).