

FACTUAL HISTORY

On April 7, 2011 appellant, then a 46-year-old meatcutter, filed a traumatic injury claim alleging that he sustained a lower back sprain as a result of operating a meat cutting band saw on April 6, 2011.

Appellant submitted an April 8, 2011 note signed by Dr. Edward E. Wilson, a Board-certified physician in emergency medicine. Dr. Wilson reported that appellant had an injury to the lower back “from [April 8 to 12, 2011].”

Dr. Thu B. Nguyen, Board-certified in internal medicine, reported on May 4, 2011 that appellant could return to work on May 5, 2011 with restrictions. He diagnosed low back pain due to an injury at work on April 8, 2011.

Michelle Jackson, a physical therapist, reported on June 16, 2011 that appellant had received treatment on May 9, 2011 for back pain.

In a July 8, 2011 letter, OWCP notified appellant of the deficiencies in his claim and requested that he submit a medical report, with a physician’s opinion supported by rationale, as to how the reported work incident caused or aggravated his claimed back condition.

A magnetic resonance imaging (MRI) scan of July 18, 2011 was received from Dr. Andrew W. Loftus, a Board-certified radiologist, who stated that it showed minimal broad-based annular bulge at T11-12 and L5-S1 and that there was no focal disc protrusion or herniation at any level.

Appellant also submitted a July 29, 2011 medical report from Dr. John Ergener, a Board-certified physician in orthopedic surgery, who diagnosed sprain or strain of the lumbar region, sciatica and stated the “place of injury” was “industrial place.”

By decision dated August 9, 2011, OWCP denied appellant’s claim finding that he failed to establish that a low back condition causally related to the accepted April 6, 2011 incident.

Appellant requested reconsideration on August 18, 2011 and submitted an August 12, 2011 treatment report from Dr. Ergener, who reiterated that appellant had a sprain or strain of the lumbar region, sciatica and low back pain. Dr. Ergener indicated generally that appellant’s back injury was sustained at work.

By decision dated November 3, 2011, OWCP affirmed the August 9, 2011 decision.²

² The letter accompanying the November 3, 2011 decision stated that a merit review had been conducted. Appeal rights consistent with a merit review accompanied the decision. However the decision itself contained language indicating that merit review was denied. The Board finds that the decision was a merit review of the claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden to establish the essential elements of his 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, that an injury was sustained in the performance of duty as alleged and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.⁵ The employee must also submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

Rationalized medical opinion evidence is medical evidence which includes a physician's 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, 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 compensable employment factors identified by the claimant.⁷

ANALYSIS

OWCP has accepted that the meat cutting incident occurred as alleged on April 6, 2011. The Board finds that appellant has submitted insufficient medical evidence to establish a low back condition caused by this work incident.

Appellant submitted form notes from Dr. Wilson and Dr. Nguyen in support of his claim. Neither physician provided a complete medical history or history of injury. Both indicated that the alleged injury occurred on April 8, 2011, rather than April 6, 2011. While Dr. Nguyen generally stated that the injury had occurred at work, he did not relate any details as to appellant's work at a meat saw or how this caused or contributed to the claimed back condition. As noted, to be of probative value, a physician's opinion must be based upon a complete medical and factual background. Furthermore, appellant's condition was stated as "lower back pain."

³ 5 U.S.C. §§ 8101-8193.

⁴ *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

⁶ *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁷ *D.G.*, 59 ECAB 734 (2008); *G.T.*, 59 ECAB 447 (2008); *I.J.*, 59 ECAB 408 (2008).

The Board has held that pain is generally considered a symptom, not a firm medical diagnosis.⁸ As such, these notes are of diminished probative value.

OWCP also received an MRI scan report from Dr. Loftus, who diagnosed a minimal bulge at T11-12 and L5-S1, but he provided no history of injury or any opinion regarding the cause of this condition.

5 U.S.C. § 8101(2) of FECA provides that the term “physician” includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. A nurse, physician’s assistant or physical and occupational therapists are not physicians as defined by FECA. Their opinions regarding diagnosis and causal relationship are of no probative medical value.⁹ The medical note from Ms. Jackson is of no probative value, as she is a physical therapist, not a physician within the meaning of FECA.

While Dr. Ergener provided a diagnosis of appellant’s condition as sprain or strain of the low back with sciatica and indicated that the injury was sustained at work, he did not provide a complete or accurate history of how the injury occurred or provide any medical rationale explaining how appellant’s employment incident physiologically caused the diagnosed condition. The Board has held that medical reports lacking rationale regarding causal relationship are of little probative value.¹⁰

Appellant did not submit sufficient medical evidence from a physician addressing how his back condition was causally related to the employment incident supported with adequate medical reasoning. He did not meet his burden of proof.

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 failed to establish that he sustained a back condition caused by his employment.

⁸ *J.W.*, Docket No. 11-1475 (issued December 7, 2011); *Robert Broome*, 55 ECAB 339, 342 (2004).

⁹ *See Roy L. Humphrey*, 57 ECAB 238 (2005).

¹⁰ *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 3 and August 9, 2011 are affirmed.

Issued: June 19, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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