



Packwood reported that he heard appellant complaining of back pain from falling down the stairs when he slipped. Appellant notified his supervisor on January 31, 2008.

In a safety investigation form, appellant's supervisor reported that appellant sustained back pain when he slipped and fell backwards down a stairwell at the Champlain Port of Entry on January 31, 2008.

In a September 28, 2010 medical report, Dr. Eric Herskowitz, a Board-certified diagnostic radiologist, noted that a magnetic resonance imaging (MRI) scan of appellant's lumbar spine showed no evidence of fracture, dislocation, fusion or instability with flexion or extension. Lumbar disc spaces were preserved and there was minimal degenerative changes of the sacroiliac joints. Dr. Herskowitz noted normal radiographs of the lumbar spine and diagnosed minimal osteoarthritis of the sacroiliac joints.

In progress notes dated April 10, 2008 to February 14, 2011, Adelaide Chute, a nurse practitioner, stated that appellant complained of low back pain after his left leg slipped on the stairs at work causing him to fall on January 31, 2008. Ms. Chute noted that appellant's pain had been intermittent over the last several years and diagnosed lumbago from the injury at work.

In an undated narrative statement, appellant stated that immediately after he fell down the stairs on January 31, 2008, he experienced severe pain with movement such as sitting, kneeling, twisting and standing. He notified his supervisor and filed a Form CA-1 on the date of the incident. Appellant stated that his pain slowly decreased after the date of injury but never fully went away, causing him to seek medical attention.

In an April 20, 2011 medical report, Dr. Richard Webber, Board-certified in internal medicine, stated that appellant initially complained of low back pain on April 10, 2008 from falling on stairs at work on January 31, 2008. Appellant was treated with physical therapy and a September 26, 2010 lumbar spine x-ray revealed normal except for minimal osteoarthritis of the sacroiliac joints. Dr. Webber opined that it was possible that the original injury caused appellant's recurrent back pain.

By decision dated May 3, 2011, OWCP denied appellant's claim finding that the evidence of record failed to establish that appellant's osteoarthritis of the sacroiliac joints was causally related to the accepted January 31, 2008 employment incident.

### **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 are causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.<sup>3</sup>

---

<sup>2</sup> Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

<sup>3</sup> Michael E. Smith, 50 ECAB 313 (1999).

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>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish causal relationship between the condition, as well as 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 such a causal relationship.<sup>5</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>6</sup>

The term physician is defined under section 8101(2), as follows: "physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law."<sup>7</sup>

### ANALYSIS

OWCP accepted that the January 31, 2008 employment incident occurred in the performance of duty as alleged. The issue is whether appellant has established that this fall on the stairs caused his back condition. The Board finds that he did not submit sufficient medical evidence to support that his osteoarthritis of the sacroiliac joints is causally related to the January 31, 2008 employment incident.<sup>8</sup>

In a September 28, 2010 medical report, Dr. Herskowitz reported that an MRI scan of appellant's lumbar spine showed no evidence of fracture, dislocation, fusion or instability with flexion or extension. Lumbar disc spaces were preserved and there was minimal degenerative changes of the sacroiliac joints. Dr. Herskowitz noted normal radiographs of the lumbar spine and diagnosed minimal osteoarthritis of the sacroiliac joints. While Dr. Herskowitz provided a diagnosis of osteoarthritis of the sacroiliac joints, he did not explain whether or how the accepted January 31, 2008 incident caused or contributed to any back condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition

---

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>6</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>7</sup> 5 U.S.C. § 8101(2).

<sup>8</sup> *See Robert Broome*, 55 ECAB 339 (2004).

is of limited probative value on the issue of causal relationship.<sup>9</sup> Thus, Dr. Herskowitz's report is insufficient to meet appellant's burden of proof.

In an April 20, 2011 medical report, Dr. Webber reported that he began treating appellant on April 10, 2008 for complaints of low back pain from falling on stairs at work on January 31, 2008. Appellant was treated with physical therapy and a September 26, 2010 lumbar spine x-ray revealed normal except for minimal osteoarthritis of the sacroiliac joints. Dr. Webber opined that it was possible that the original injury caused appellant's back pain.

The Board finds that the opinion of Dr. Webber is not well rationalized. While Dr. Webber diagnosed appellant's injury, he failed to explain how the accepted January 31, 2008 incident caused or contributed to the diagnosed back condition. Dr. Webber's opinion that it was possible that the original injury caused appellant's back pain is speculative and equivocal.<sup>10</sup> To be of probative value, a physician's opinion on causal relationship should be one of reasonable medical certainty.<sup>11</sup> Dr. Webber's opinion references back pain and not osteoarthritis of the sacroiliac joints, as a possible diagnosis resulting from the January 31, 2008 employment incident. The Board has held that pain is generally a description of a symptom rather than a firm medical diagnosis.<sup>12</sup> Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>13</sup> The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.<sup>14</sup> Without medical reasoning explaining how January 31, 2008 employment incident caused or contributed to appellant's osteoarthritis of the sacroiliac joints, Dr. Webber's report is insufficient to meet appellant's burden of proof.<sup>15</sup>

The remaining medical evidence of record from Ms. Chute, a nurse, is also insufficient to establish causal relationship between appellant's injury and the January 31, 2008 employment incident. Nurse practitioners are not physicians as defined under FECA, therefore, their reports do not constitute medical evidence in support of a claim.<sup>16</sup>

---

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

<sup>10</sup> *See Michael R. Shaffer*, 55 ECAB 339 (2004).

<sup>11</sup> *See Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>12</sup> *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

<sup>13</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>14</sup> *See Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>15</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>16</sup> Section 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; *see also Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996); *Barbara J. Williams*, 40 ECAB 649 (1988).

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the January 31, 2008 employment incident and appellant's osteoarthritis of the sacroiliac joints. Thus, appellant has failed to meet his burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his osteoarthritis of the sacroiliac joints is causally related to the January 31, 2008 employment incident, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 3, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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