



## **FACTUAL HISTORY**

On May 28, 2010 appellant, then a 38-year-old practical nurse, filed a traumatic injury claim alleging that on May 25, 2010 she experienced acute back pain with sciatica as a result of helping a patient get into bed. She stopped work on May 28, 2010.

By letter dated June 14, 2010, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit factual and medical evidence, including a rationalized medical opinion from an attending physician describing a history of injury, all prior industrial and nonindustrial injuries to her back and providing a firm diagnosis, findings, symptoms, test results, treatment, prognosis, period and extent of disability with an explanation as to how the May 25, 2010 incident caused or aggravated her medical condition.

In a May 26, 2010 prescription note, Dr. Christopher D'Angelo, a Board-certified internist, ordered physical therapy to treat appellant's back pain.

In medical reports dated May 26 through July 12, 2010, Dr. Thomas W. Witmer, a Board-certified internist, obtained a history that, after appellant lifted a patient weighing approximately 500 pounds at work on May 25, 2010, she had pain in the left low back radiating into the left buttock and down to the left leg and foot with numbness. It was aggravated by changing positions or walking. Dr. Witmer listed physical examination findings and diagnosed acute low back pain with some degree of sciatica and left lumbar radiculopathy. He advised that the diagnosed conditions were caused by the history of injury. Dr. Witmer further advised that appellant was temporarily totally disabled as of May 26, 2010. In a July 6, 2010 prescription, he stated that she remained temporarily totally disabled. In a July 14, 2010 report, Dr. Witmer again noted that appellant's acute low back pain with some degree of sciatica was caused or aggravated by the May 25, 2010 incident.

By letter dated July 2, 2010, the employing establishment controverted appellant's claim, contending that on May 25, 2010 she intentionally injured herself and refused assistance based on accompanying witness statements from her coworkers. It noted that her prior claim for an April 3, 2010 injury was denied by OWCP due to a lack of supportive medical documentation.<sup>2</sup> The employing establishment contended that appellant received proper training regarding lifting procedures and, thus, she acted negligently on the date of injury.

In a July 21, 2010 decision, OWCP denied appellant's claim. It found that the evidence was insufficient to establish that the May 25, 2010 incident occurred as alleged.

On August 10, 2010 appellant requested a review of the written record by an OWCP hearing representative.

In a May 26, 2010 report, Dr. D'Angelo listed a history that on May 25, 2010 appellant developed an onset of acute low back pain with radiation in the left leg after transferring a 500-pound patient at work. He listed findings on physical examination and diagnosed acute onset of

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<sup>2</sup> Appellant filed a claim for a back injury she sustained on April 3, 2010 under OWCP File No. xxxxxx929.

low back pain with some degree of sciatica. Dr. D'Angelo advised that appellant was totally disabled for work.

On August 9, 2010 Dr. David L. Hamilton, a Board-certified internist, reported that after lifting a 497-pound patient at work on May 25, 2010 appellant developed left-sided low back pain radiating down the left leg to the left foot. Appellant's pain was aggravated by standing and sitting too long. She could not lie on her back. Dr. Hamilton listed physical and neurological examination findings and advised that appellant was totally disabled from performing her regular work duties. He further advised that her injury was caused by the history of injury.

In a prescription dated September 2, 2010, Dr. Witmer advised that appellant remained temporarily totally disabled. In reports dated September 14 and 17 and October 12, 2010, he reiterated his opinion that her acute low back pain with some degree of sciatica and left lumbar radiculopathy were caused or aggravated by the May 25, 2010 incident and she was disabled. In a November 11, 2010 report, Dr. Witmer listed findings on physical examination and reviewed the results of an October 21, 2010 lumbar magnetic resonance imaging (MRI) scan. He reiterated his prior diagnosis of chronic low back pain with left lumbar radiculopathy and advised that the diagnosed condition was "possibly" related to an annular tear of L4-5 as shown on the recent lumbar MRI scan. In a January 10, 2011 report, Dr. Witmer listed physical examination findings and reviewed the results of a January 6, 2011 computerized tomography (CT) scan of the abdomen and pelvis. He diagnosed classical left sciatica and advised that the condition was "probably" related to pressure neuropathy secondary to pressure on the left-sided sciatic nerve that was related to the way appellant favored her right leg.

In an October 19, 2011 decision, OWCP's hearing representative affirmed as modified the July 21, 2010 decision, finding the evidence sufficient to establish that the May 25, 2010 incident occurred as alleged. The hearing representative found that the medical evidence failed to establish that appellant sustained a back injury causally related to the accepted employment incident.

### **LEGAL PRECEDENT**

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 filed within applicable time limitation; that an injury was sustained while 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 on a traumatic injury of an occupational disease.<sup>5</sup>

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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> See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

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 or exposure, which is alleged to have occurred.<sup>6</sup> In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.<sup>7</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>8</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>9</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>10</sup>

### ANALYSIS

In an October 19, 2011 decision, OWCP accepted as factual that appellant was helping a patient get into bed on May 25, 2010 while working as a practical nurse. The Board finds, however, that the medical evidence of record is insufficient to establish that her back condition was caused or aggravated by the May 25, 2010 employment incident.

Dr. Witmer's reports dated May 26 through October 12, 2010 provided physical examination findings and diagnoses of low back pain with some degree of sciatica and left lumbar radiculopathy. He opined that the diagnosed conditions were caused by the accepted May 25, 2010 employment incident. Dr. Witmer further opined that appellant was temporarily totally disabled as of May 26, 2010. While he described his diagnoses and opined that her ongoing pain and conditions were caused by the accepted employment incident, the Board finds that he failed to provide a sufficiently rationalized medical opinion explaining how helping a patient get into bed caused her diagnosed conditions and resultant disability. As noted, part of appellant's burden of proof includes the submission of medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by her.<sup>11</sup> Dr. Witmer's reports did not explain how the accepted employment incident caused or aggravated her diagnosed conditions and resulting in total disability. In a November 11, 2010 report, he advised that his diagnosis of chronic low back pain with left lumbar radiculopathy was

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<sup>6</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>7</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

<sup>9</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>10</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

<sup>11</sup> See *supra* note 9.

“possibly” related to an annular tear of L4-5 as shown on the recent lumbar MRI scan. In a January 10, 2011 report, Dr. Witmer reviewed the results of a January 6, 2011 CT scan of the abdomen and pelvis. He diagnosed classical left sciatica and advised that the condition was “probably” related to pressure neuropathy secondary to pressure on the left-sided sciatic nerve that was related to the way appellant favored her right leg. In both reports, Dr. Witmer reiterated his prior opinion that she was totally disabled. The Board finds, however, that he did not provide a rationalized medical opinion on causal relationship in these reports. Dr. Witmer’s use of the words possibly and probably is equivocal and speculative in addressing the cause of appellant’s conditions and, thus, his opinions are of diminished probative value. Moreover, he did not attribute the diagnosed conditions and resultant disability to the accepted May 25, 2010 employment incident. Similarly, Dr. Witmer’s prescriptions which advised that appellant continued to be totally disabled did not provide a firm medical diagnosis or address the causal relationship between the May 25, 2010 employment incident and any disabling condition. Medical evidence that does not offer any opinion regarding the cause of an employee’s conditions is of limited probative value on the issue of causal relationship.<sup>12</sup> For the stated reasons, the Board finds Dr. Witmer’s reports and prescriptions are insufficient to establish appellant’s claim.

Dr. Hamilton’s report found that appellant’s low back pain was caused by the accepted May 25, 2010 employment incident. He also found that she was totally disabled from performing her regular work duties. The Board has consistently held that pain is a symptom, not a compensable medical diagnosis,<sup>13</sup> and 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.<sup>14</sup> Dr. Hamilton did not explain how helping a patient get into bed would cause or contribute to the claimed back condition and resultant disability. Lacking this medical explanation, the Board finds that his report is insufficient to establish appellant’s claim.<sup>15</sup>

Dr. D’Angelo’s report and prescription found that appellant had acute low back pain with sciatica for which he ordered physical therapy. He also found that she was totally disabled for work. However, Dr. D’Angelo did not provide an opinion addressing the causal relationship between the diagnosed condition and resultant disability and the accepted employment incident.<sup>16</sup> The Board finds, therefore, that this evidence is insufficient to establish appellant’s claim.

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<sup>12</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>13</sup> *C.F.*, Docket No. 08-1102 (issued October 10, 2008); *Robert Broome*, 55 ECAB 339 (2004).

<sup>14</sup> *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

<sup>15</sup> *S.S.*, 59 ECAB 315, 322 (2008); *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

<sup>16</sup> See cases cited *supra* note 12.

The Board finds that there is insufficient rationalized probative medical evidence of record to establish that appellant sustained a back injury causally related to the accepted May 25, 2010 employment incident. Appellant did not meet her burden of proof.

On appeal, counsel contended that appellant sustained a back injury causally related to the May 25, 2010 employment incident. For the reasons stated, the Board finds that she did not submit sufficiently rationalized probative medical evidence to establish her claim.

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 failed to establish that she sustained a back injury on May 25, 2010, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 19, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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