



November 1, 2010. In an attached narrative statement, he reported that Ann Ramos, his supervisor, requested that he help load and unload trucks on November 1, 2010. Appellant used a forklift to drive into the trailer of the truck when the truck began to move, causing the forklift and appellant to fall off. He notified his supervisor and stopped work on November 1, 2010. In support of his claim, appellant provided a number of witness statements describing the events of that date.

In a November 1, 2010 diagnostic report, Dr. Kent Ibanez, a Board-certified diagnostic radiologist, reported that a magnetic resonance imaging (MRI) scan of the cervical and lumbar spine showed an unremarkable cervical spine, thoracic spine and lumbosacral spine.

In a November 6, 2010 x-ray of the right hand, Dr. Jason C. Naples, a Board-certified diagnostic radiologist, reported that the bones of the right hand appeared intact with no malalignment.

In a December 3, 2010 diagnostic report, Dr. Jonathan Kern, a Board-certified diagnostic radiologist, reported that an MRI scan of the right hand demonstrated ulnar subluxation of the extensor carpi ulnaris tendon.

In medical reports dated November 2 to December 7, 2010, Dr. Anthony Hicks, Board-certified in internal medicine, reported that appellant complained of cervical, trapezial, thoracic, bilateral shoulder, lumbar and left lateral thigh dysfunction pain. He opined that appellant's complaints were more likely than not directly and solely related to the November 1, 2010 employment incident. Dr. Hicks stated that appellant's injuries were related to the November 1, 2010 employment incident because the onset of complaints started at work on that date, were consistent with the work duties appellant performed and were consistent with the medical diagnoses in the medical records submitted. He further stated that appellant did not have prior complaints leading to the injuries in question before the work-related incident and did not engage in other physical activities that could account for the symptoms noted which commenced on November 1, 2010. Dr. Hicks also stated that appellant sustained injuries on February 2, 2010 which were traumatic in nature and commenced acutely on November 1, 2010 when completing his work required physical activities.

In duty status reports (Form CA-17) dated November 9, 2010 to January 11, 2011, Dr. Hicks reported that appellant was unable to work and should remain off duty until January 11, 2011 when he was released to work with restrictions.

By letter dated January 6, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was asked to respond to the questions provided in the letter within 30 days.

On January 12, 2011 appellant accepted an offer of modified assignment with the employing establishment.

By decision dated February 7, 2011, OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to establish a diagnosed medical condition which could be connected to the accepted November 1, 2010 employment incident.

By letter dated February 7, 2011, the employing establishment controverted the claim. It noted that Dr. Hicks' reports documented 19 separate diagnoses which were purportedly causally related to the November 1, 2010 employment incident, that appellant failed to provide a medical report which supported causal relationship between his alleged injuries and the November 1, 2010 employment incident and that he sought medical treatment on January 18, 2011 for a nonoccupational fist fight he was involved in which was unrelated to his job injury. The employing establishment included a statement from appellant's supervisor who stated that he informed her of the January 18, 2011 fight.

By letter dated March 9, 2011, appellant requested reconsideration of OWCP's decision. He stated that he was operating a forklift and unloading a trailer when the trailer pulled away from the dock, causing him and the forklift to crash to the floor. Appellant submitted additional medical reports in support of his claim and stated that Dr. Hicks' reports clearly provided an opinion on causal relationship.

In a November 1, 2010 emergency room report, Dr. Ajay Yadav, Board-certified in emergency medicine, reported that appellant complained of moderate neck pain after he was driving a forklift on the back of a delivery truck which pulled away, causing the forklift to fall to the ground with appellant in the driver's seat. He noted that the forklift landed on its wheels and did not tip over. Upon physical examination and review of diagnostic testing, Dr. Yadav diagnosed thoracic strain and lumbar strain.

In a November 3, 2011 medical report, Dr. Hicks reported that appellant was in a forklift accident at work on November 1, 2010. He diagnosed cervical sprain, thoracic sprain, lumbar sprain, trapezial sprain, joint effusion, hip contusion, sacroilitis inflamed joint tissue, shoulder sprain, upper arm sprain and sacroiliac sprain.

In a November 6, 2010 emergency room report, Dr. Rex Medford, Board-certified in emergency medicine, reported that appellant presented to the emergency room for an injury to the right hand which occurred five days ago at work. He noted that moderate tenderness and mild swelling of the right hand, noting that x-rays revealed normal. Dr. Medford diagnosed right hand sprain.

In a February 1 and 24, 2011 medical report, Dr. Hicks reiterated that appellant's cervical, trapezial, thoracic, bilateral shoulder, lumbar and left lateral thigh dysfunction pain were more likely than not directly and solely related to (caused by) the November 1, 2010 work incident as reported and had worsened since that date. He repeated the reasons previously cited for his conclusion and further stated that he based his assessment on the history of injury given by appellant, actual complaints, physical examination and findings, the mechanical mechanism of injury and the work required physical activities being performed at the time the injury was sustained. In an undated prescription note, Dr. Hicks stated that appellant was unable to work from January 21 to 31, 2011 due to a rib fracture. In a February 15, 2011 duty status report, he stated that appellant could return to work with restrictions.

By decision dated March 31, 2011, OWCP affirmed the February 7, 2011 decision, as modified, finding that the medical evidence did not establish that appellant's injury was causally

related to the accepted November 1, 2010 employment incident. It specifically noted that the reports of Dr. Hicks were not well reasoned on the issue of causal relationship.

By letter dated July 18, 2011, appellant, through his representative, requested reconsideration of OWCP's decision. Counsel stated that Board precedent and cases cited by OWCP supported appellant's claim for compensation. He noted that appellant sought immediate emergency treatment on the date of the employment incident where Dr. Yadav provided a diagnosis of thoracic strain, lumbar strain and cervical strain. Appellant sought follow-up treatment with Dr. Hicks the next day who opined that appellant's diagnosed conditions were caused by the November 1, 2010 employment incident and provided a variety of reasons for his conclusion. Counsel stated that Dr. Hicks' opinion and rationale was sufficient to establish appellant's claim and provided findings and support for his opinion as cited in the cases referenced by OWCP. In support of his arguments, medical evidence previously of record was resubmitted.

By decision dated September 23, 2011, OWCP affirmed the March 31, 2011 decision. It found that, although counsel submitted an argument and provided his interpretation of the medical evidence, the medical evidence was insufficient to establish that appellant's injuries were causally related to the November 1, 2010 employment incident. OWCP noted that Dr. Hicks' reports did not offer an explanation as to the mechanism of injury or how the incident caused the diagnosed conditions.

### **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>

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.

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<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).

<sup>4</sup> Elaine Pendleton, *supra* note 2.

To establish a 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>

### ANALYSIS

OWCP accepted that the November 1, 2010 employment incident occurred as alleged. The issue is whether appellant established that the incident caused his multiple injuries. The Board finds that he did not submit sufficient medical evidence to support that his neck, back, shoulder, leg, arm and hand injuries were causally related to the November 1, 2010 employment incident.<sup>7</sup>

In a November 1, 2010 emergency room report, Dr. Yadav reported that appellant complained of moderate neck pain after he was driving a forklift on the back of a delivery truck which pulled away, causing the forklift to fall to the ground with appellant in the driver's seat. He noted that the forklift landed on its wheels and did not tip over. Upon physical examination and review of diagnostic testing, Dr. Yadav diagnosed thoracic strain and lumbar strain. While he provided a diagnosis of thoracic and lumbar strain, he did not explain whether or how the accepted November 1, 2010 incident caused or contributed to any back condition. Dr. Yadav merely recounted the incident as alleged by appellant but failed to provide an opinion on the cause of appellant's injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>8</sup> Thus, Dr. Yadav's report is insufficient to meet appellant's burden of proof.

In a November 6, 2010 emergency room report, Dr. Medford reported that appellant presented to the emergency room for a right hand injury which occurred five days ago at work. He diagnosed right hand sprain. Dr. Medford's report is insufficient to meet appellant's burden of proof as he did not determine that his condition was work related or offer a rationalized

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

<sup>8</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

opinion on causal relationship between appellant's right hand sprain and the November 1, 2010 employment incident.<sup>9</sup>

In medical reports dated November 2, 2010 to February 24, 2011, Dr. Hicks reported that appellant was in a forklift accident at work on November 1, 2010. He diagnosed cervical sprain, thoracic sprain, lumbar sprain, trapezial sprain, joint effusion, hip contusion, sacroilitis inflamed joint tissue, shoulder sprain, upper arm sprain, sacroiliac sprain and left lateral thigh dysfunction pain. Dr. Hicks opined that appellant's cervical, trapezial, thoracic, bilateral shoulder, lumbar and left lateral thigh dysfunction pain was more likely than not directly and solely related to (caused by) the November 1, 2010 work incident as reported and had worsened since that date. He stated that appellant's injuries were related to the November 1, 2010 employment incident because the onset of complaints started at work on that date, were consistent with the work duties appellant performed and were consistent with the medical diagnoses in the medical records submitted. Further, appellant did not have prior complaints leading to the injuries in question before the work-related incident and did not engage in other physical activities that could account for the symptoms that commenced on November 1, 2010. Dr. Hicks also stated that his opinion was based on his assessment of the history of injury given by appellant, the actual complaints, physical examination and findings, the mechanical mechanism of injury and the work required physical activities being performed at the time the injury was sustained. He then noted that appellant sustained injuries on February 2, 2010 which were traumatic in nature and commenced acutely on November 1, 2010 when completing his work required physical activities.

The Board finds that the opinion of Dr. Hicks is not well rationalized. Dr. Hicks provides a multitude of diagnoses but fails to identify how the November 1, 2010 employment incident contributed to appellant's injuries. While he noted that appellant was in a forklift accident on November 1, 2010, it is unclear how this accident would cause appellant's injuries to occur. Dr. Hicks stated that his opinion was based on a number of factors including that appellant's complaints started on that work date, were consistent with his work duties, were consistent with the medical diagnoses in the medical records submitted, there were no prior complaints leading to the injuries in question before the work-related incident and that appellant did not engage in other physical activities that could account for the symptoms that commenced on November 1, 2010. Despite stating why he believed that appellant's injuries were related to the November 1, 2010 employment incident, he did not state how the mechanism of injury would occur from a forklift accident. Dr. Hicks failed to explain any details regarding the forklift accident which he attributes to appellant's cervical sprain, thoracic sprain, lumbar sprain, trapezial sprain, joint effusion, hip contusion, sacroilitis inflamed joint tissue, shoulder sprain, upper arm sprain, sacroiliac sprain and left lateral thigh dysfunction pain. Further, he stated that his opinion on causal relationship was based on the medical diagnoses in the medical records submitted but failed to state what diagnoses or medical records he was referring to.

Moreover, Dr. Hicks indicated that appellant sustained a traumatic injury on February 2, 2010 which commenced acutely on November 1, 2010. He failed to provide any details

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<sup>9</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

regarding appellant's medical history or note what the incident and injury was from the February 2, 2010 incident. It is unclear if the diagnoses Dr. Hicks provided are a result of preexisting conditions from the February 2, 2010 traumatic injury or if it was caused or aggravated by the November 1, 2010 employment incident. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>10</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>11</sup> Without medical reasoning explaining how November 1, 2010 employment incident caused or contributed to his injuries, Dr. Hicks' reports are insufficient to meet appellant's burden of proof.<sup>12</sup>

The remaining medical evidence of record is also insufficient to establish appellant's claim. Dr. Ibanez's November 1, 2010 diagnostic report noted that appellant's MRI scan showed unremarkable findings of the cervical spine, thoracic spine, lumbosacral spine. Dr. Naples November 1, 2010 x-ray of the right hand revealed that the bones were intact with no malalignment. Dr. Kern's December 3, 2010 diagnostic report identified ulnar subluxation of the extensor carpi ulnaris tendon of the right hand. Dr. Ibanez and Dr. Naples reports provide no diagnosis and unremarkable findings. While Dr. Kern provides a diagnosis for appellant's right hand, he fails to state any opinion on causal relationship.<sup>13</sup> Thus, the reports are of limited probative value.

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the November 1, 2010 employment incident and appellant's injuries. Thus, appellant has failed to meet his burden of proof.

The Board notes that appellant submitted medical evidence to the Board with his appeal request. The Board's review of a case is limited to evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.<sup>14</sup> 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.

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<sup>10</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>11</sup> *See Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>12</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>13</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>14</sup> 20 C.F.R. § 501.2(c)(1)

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his back, arm, neck, hand, shoulder and leg injuries are causally related to the November 1, 2010 employment incident, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 23, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 18, 2012  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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