



## **FACTUAL HISTORY**

On March 30, 2011 appellant, then a 36-year-old nursing assistant, filed a traumatic injury claim alleging that she felt pain and a pop in her lower back, buttocks and leg when she turned to address a patient on March 25, 2011.

Appellant submitted a Form CA-16 (authorization for examination and treatment) dated March 30, 2011, indicating that she had twisted her back and torso while walking a patient. The form was signed by a workers' compensation specialist at the employing establishment.

Appellant submitted reports and notes for the period March 30 through April 27, 2011 from Deborah Smith, a nurse practitioner. On March 30, 2011 Ms. Smith stated that appellant experienced pain in her right buttock and leg on March 25, 2011 when she turned quickly with her feet planted while walking a patient. She diagnosed sacroiliitis and sciatica. Duty status reports dated April 6 and 13, 2011 placed appellant off work. On April 13, 2011 Ms. Smith diagnosed lower back pain with radiculitis. The record contains physical therapy notes dated March 31, 2011.

On April 22, 2011 Dr. Raman Dhawan, a Board-certified orthopedic surgeon, related appellant's report that she had a work-related injury about a month prior when she twisted her back and heard a pop. Since that time, appellant had experienced back pain and radiculopathy. Examination of the lumbar spine revealed decreased range of movement. Movements of flexion and extension were restricted. Dr. Dhawan diagnosed lumbar intervertebral disc displacement lumbar and lumbar strain. He placed appellant off work and recommended a magnetic resonance imaging (MRI) scan of the lumbar spine to rule out a herniated disc. In response to the question as to whether the incident described by appellant was the competent medical cause of her condition, Dr. Dhawan placed a check mark in the "yes" box.

In a letter dated May 18, 2011, OWCP informed appellant that the information submitted was insufficient to establish her claim. It allowed her 30 days to submit additional information, including a detailed account of the alleged injury and a physician's report, with a diagnosis and a rationalized opinion as to the cause of the diagnosed condition.

Appellant submitted a May 11, 2011 duty status report signed by a physician's assistant. The record also contains a report of a June 3, 2011 MRI scan of the lumbar spine.

In a decision dated June 20, 2011, OWCP denied appellant's claim, finding that the medical evidence was insufficient to establish a causal relationship between the accepted work incident and a diagnosed back condition.

On June 25, 2011 appellant requested reconsideration. She submitted a May 14, 2011 disability slip from Dr. Dhawan and May 3, 2011 physical therapy notes.

In a decision dated September 28, 2011, OWCP denied appellant's reconsideration request, finding that the evidence submitted was insufficient to warrant further merit review.

In a follow-up report dated October 14, 2011, Dr. Dhawan noted appellant's continuing back pain with right-sided radiculopathy and opined that she was unable to work. He placed checkmarks in a "yes" box indicating his belief that the incident described by her was the competent medical cause of her injury.

On January 23, 2012 appellant again requested reconsideration.

In a report dated February 10, 2012, Dr. Dhawan reviewed the results of the June 3, 2011 MRI scan, which showed spondylosis at L5 and degenerative changes at L4-5 and L5-S1. He diagnosed lumbar intervertebral disc displacement and again indicated with a checkmark in the "yes" box that the incident described by appellant was the competent medical cause of her condition.

Appellant submitted reports from Dr. James M. Inzerillo, a Board-certified physiatrist. In a report dated October 24, 2011, Dr. Inzerillo obtained a history of injury, noting that she felt a pop in her lower back, followed by immediate pain in her right leg, after turning sharply to speak to a patient walking to the psych ward at work. On examination of the low back, active range of motion measurements were as follows: flexion -- 40 degrees; forward flexion from the hips -- 65 degrees with lumbar pain and "tight" feeling in leg; extension -- 30 degrees, without pain; right rotation -- 45 degrees with right-sided lumbar pain and pain down her right leg; left rotation -- 45 degrees with right-sided lumbar pain and pain down her right leg. There was mild paraspinal lumbar muscle hypertonicity and tenderness with moderate palpation, as well as exquisite points in the right buttock in area of the piriformis muscle and exquisite right proximal sartorius and vastus lateralis trigger points. Sacroiliac motion palpation revealed right S1 joint restriction and tenderness in flexion and external rotation. Dr. Inzerillo diagnosed low back pain; myalgia and myositis; lumbar intervertebral disc displacement; spondylolysis; degenerative disc disease at L4-5 with an annular fissure; and small central/right paracentral disc protrusion, as evidenced by MRI scan. He stated that much, if not most, of her pain appeared to be secondary to myofascitis throughout her right buttock and right thigh, along with an associated right sacroiliac joint dysfunction and pain. Dr. Inzerillo indicated by placing a checkmark in the "yes" box that the incident described by appellant was the competent medical cause of this injury.

In a December 15, 2011 follow-up report, Dr. Inzerillo reiterated the diagnoses and again placed a checkmark in the "yes" box indicating his belief that the claimed incident caused appellant's diagnosed condition.

On July 18, 2012 appellant again requested reconsideration.

By decision dated October 16, 2012, OWCP denied modification of its prior decision on the grounds that the medical evidence was insufficient to establish a causal relationship between a diagnosed condition and the claimed event.

### **LEGAL PRECEDENT**

FECA provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> The phrase

---

<sup>2</sup> 5 U.S.C. § 8102(a).

“sustained while in the performance of duty” is regarded as the equivalent of the coverage formula commonly found in workers’ compensation laws, namely, arising out of and in the course of employment.<sup>3</sup>

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of 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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the fact of injury, consisting of two components, which must be considered in conjunction with one another. The first is whether the employee actually experienced the incident that is alleged to have occurred at the time, place and in the manner alleged. The second is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>5</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>6</sup> An award of compensation may not be based on appellant’s belief of causal relationship.<sup>7</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>8</sup> Simple exposure to a workplace hazard does not constitute a work-related injury entitling an employee to medical treatment under FECA.<sup>9</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported

---

<sup>3</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>4</sup> *Robert Broome*, 55 ECAB 339 (2004).

<sup>5</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Tracey P. Spillane*, 54 ECAB 608 (2003); *Betty J. Smith*, 54 ECAB 174 (2002). The term injury as defined by FECA, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q)(ee).

<sup>6</sup> *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>7</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

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

<sup>9</sup> 20 C.F.R. § 10.303(a).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>10</sup>

### ANALYSIS

OWCP accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the March 25, 2011 workplace incident occurred as alleged. The issue, therefore, is whether she submitted sufficient medical evidence to establish that the employment incident caused an injury. The evidence of record does not contain a rationalized medical opinion from a physician sufficient to establish that the work-related incident caused or aggravated a back condition or disability. Therefore, appellant has failed to meet her burden of proof.

The medical evidence submitted by appellant included reports and disability slips from Dr. Dhawan, who provided a history of injury and examination findings. After reviewing the results of a June 3, 2011 MRI scan, which showed spondylosis at L5 and degenerative changes at L4-5 and L5-S1, Dr. Dhawan diagnosed lumbar intervertebral disc displacement and lumbar strain. In reports dated April 22 and October 14, 2011 and February 10, 2012, he indicated by placing a checkmark in the “yes” box his belief that the incident described by appellant was the competent medical cause of her condition. Dr. Dhawan did not, however, sufficiently explain the process through which the March 25, 2011 incident was competent to cause the claimed lumbar disc condition. Medical conclusions unsupported by rationale are of little probative value.<sup>11</sup> The Board has held that a report that addresses causal relationship with a checkmark, without a medical rationale explaining how the work conditions caused the alleged injury, is of diminished probative value and is insufficient to establish causal relationship.<sup>12</sup> Dr. Dhawan’s disability slips and notes do not provide a full history of appellant’s treatment for her back or an opinion on the cause of her condition sufficient to establish her claim. Medical evidence which 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>13</sup>

Dr. Inzerillo’s reports are similarly deficient. On October 24, 2011 he provided a history of injury and examination findings. Dr. Inzerillo diagnosed low back pain; myalgia and myositis; lumbar intervertebral disc displacement; spondylolysis; degenerative disc disease at L4-5 with an annular fissure; and small central/right paracentral disc protrusion, as evidenced by MRI scan. He indicated by checkmark in the “yes” box that the incident described by appellant was the competent medical cause of this injury. On December 15, 2011 Dr. Inzerillo reiterated his prior diagnoses and again placed a checkmark in the “yes” box indicating his belief that the claimed incident caused her diagnosed condition. As noted, without medical rationale explaining how the March 25, 2011 incident caused the diagnosed conditions, his checkmark opinion is of limited probative value.

---

<sup>10</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> *Willa M. Frazier*, 55 ECAB 379.

<sup>12</sup> *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

<sup>13</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

Reports from Ms. Smith, a nurse practitioner, and physical therapy notes do not constitute probative medical evidence, as nurse practitioners and physical therapists do not qualify as “physicians” under FECA.<sup>14</sup> Therefore, they are insufficient to establish appellant’s claim.

Appellant expressed her belief that her back condition resulted from the March 25, 2011 employment incident. 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>15</sup> Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>16</sup> Causal relationship must be substantiated by reasoned medical opinion evidence, which it is appellant’s responsibility to submit. Therefore, her belief that her condition was caused by the work-related incident is not determinative.

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the doctor’s opinion, with medical reasons, on the cause of her condition. Appellant failed to submit appropriate medical documentation in response to OWCP’s request. As there is no probative, rationalized medical evidence addressing how her claimed back condition was caused or aggravated by her employment, she has not met her burden of proof to establish that she sustained an injury in the performance of duty causally related to factors of her federal employment.

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 meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on March 25, 2011.

---

<sup>14</sup> A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as “physician” as defined in 5 U.S.C. § 8101(2). Section 8101(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 *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>15</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>16</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2013  
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