

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>S.R., Appellant</b>  <b>and</b>  <b>DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Grand Rapids, MI, Employer</b>	) ) ) ) ) ) ) ) )	<b>Docket No. 13-932 Issued: August 19, 2013</b>
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<i>Appearances:</i> <i>Appellant, pro se</i> <i>Office of Solicitor, for the Director</i>	<i>Case Submitted on the Record</i>
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**DECISION AND ORDER**

Before:  
 COLLEEN DUFFY KIKO, Judge  
 PATRICIA HOWARD FITZGERALD, Judge  
 MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 11, 2013 appellant filed a timely appeal of a January 29, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant established that she sustained an injury in the performance of duty on October 17, 2012, as alleged.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On October 22, 2012 appellant, then a 44-year-old nurse, filed a traumatic injury claim alleging that she injured her left low back on October 17, 2012 when she bent over to pick up a box.

In an October 22, 2012 report, Dr. Anita Asadorian, a treating osteopath, provided physical findings and diagnosed sacroiliitis. Appellant related that the prior Wednesday she injured herself when she bent forward to pull a box and then could not stand up.

The record contains physical therapy notes for the period October 31 to November 21, 2012 signed by Allison Ford, a physical therapist. The plan of care form indicated that appellant was seen for low back pain following an injury at work which occurred when she bent forward and twisted while getting a box.

In a November 15, 2012 report, Christina Reisinger, a nurse practitioner, reported appellant was seen for back pain which began on October 17, 2012. She provided physical findings and diagnosed sacroiliitis.

On December 7, 2012 Dr. Asadorian saw appellant for tingling down both legs from her back injury. She provided physical findings and diagnosed lumbago and lower extremity radicular pain.

In a December 26, 2012 letter, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised to submit additional medical and factual evidence.

In response to OWCP's request, appellant submitted physical therapy reports for the period November 26 to December 29, 2012 from Kristyn Hopkins and Brandon Yuenger.

By decision dated January 29, 2013, OWCP denied appellant's claim. It accepted that appellant bent over on October 17, 2012 to pick up a box; however, she failed to establish that the diagnosed condition was causally related to the October 17, 2012 employment incident.<sup>2</sup>

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> bears the burden of proof to establish 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 and/or specific condition for which compensation is claimed are causally related to the

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<sup>2</sup> Following the January 29, 2013 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

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 or an occupational disease.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.<sup>6</sup> First, 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.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup>

The claimant's burden includes establishing by the weight of reliable, probative and substantial medical evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>9</sup> An award of compensation may not be based on appellant's belief of causal relationship. 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>10</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>11</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>12</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>13</sup>

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<sup>4</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>5</sup> S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> B.F., Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

<sup>7</sup> D.B., 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>8</sup> C.B., Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

<sup>9</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>10</sup> P.K., Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>11</sup> Y.J., Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>12</sup> J.J., Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>13</sup> I.J., 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

## ANALYSIS

OWCP accepted that appellant was a federal employee that she timely filed her claim for compensation benefits. It accepted that the October 17, 2012 incident occurred as alleged. The issue is whether she submitted sufficient medical evidence to establish that the employment incident caused a back injury. The Board finds that the medical evidence submitted by appellant is insufficient to establish that she sustained the back condition was causally related to the accepted October 17, 2012 employment incident. Therefore, she has failed to meet her burden of proof.

Appellant submitted medical reports from Dr. Asadorian dated October 22 and December 7, 2012. In her initial report, Dr. Asadorian noted a history of injury as occurring the previous Wednesday when appellant related bending forward, pulling up a box and then being unable to stand up. She diagnosed sacroiliitis. In the subsequent report, Dr. Asadorian reported seeing appellant for her back injury and lumbago and lower extremity radicular pain. She provided no opinion as to how the accepted October 17, 2012 employment incident caused appellant's back condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>14</sup>

Appellant also submitted reports signed by Ms. Ford and Mr. Yuenger, physical therapists, and Ms. Reisinger, a nurse practitioner. The Board notes, however, that neither a nurse practitioner nor a physical therapist is a physician as defined under FECA.<sup>15</sup> Accordingly, their opinions regarding causal relationship are of no probative medical value.<sup>16</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>17</sup> Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence.

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report from a physician which described her symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit adequate medical documentation in response to OWCP's request. As there is no

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<sup>14</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *K.W.*, 59 ECAB 271 (2007); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Dennis M. Mascarenas*, *supra* note 10 at 217.

<sup>15</sup> 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. 5 U.S.C. § 8102(2); *A.C.* Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation, as physical therapists are not physicians as defined under FECA); *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA); *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>16</sup> *E.H.*, Docket No. 08-1862 (issued July 8, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>17</sup> *See D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

probative, rationalized medical opinion addressing how her back condition was caused or aggravated by the October 17, 2012 employment incident, she has not met her 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 meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on October 17, 2012.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 29, 2013 is affirmed.

Issued: August 19, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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