



back muscle due to bending over to pick up a screw driver. He stopped work on January 17, 2012 and returned to modified work on March 13, 2012.

The record contains treatment notes dated December 29 and 30, 2011 from Benjil Lightfoot, a nurse. Physical examination findings were provided and a diagnosis of lumbar strain. Under history of illness, it was noted that appellant felt lower back pain while bending over to pick up a screw driver. A review of x-ray interpretation on December 30, 2011 revealed severe L2-3 and markedly severe L5-S1 degenerative disc disease.

In a January 24, 2012 report, Dr. Winston Jeshuran, a treating Board-certified orthopedic surgeon, diagnosed multilevel degenerative spondylosis at L2-3 and L5-S1 based on an x-ray interpretation. Under history of injury, he noted that appellant developed low back pain on December 29, 2011 due to bending over repeatedly to pick up a screw driver in a confined area. Dr. Jeshuran indicated that appellant was totally disabled from working until March 13, 2012 in a January 24, 2012 work status form.

In a March 13, 2012 letter, OWCP informed appellant that when his claim had been received it appeared to be a minor injury and was administratively approved without consideration of the merits. It informed him that his claim was reopened for consideration and that the evidence of record was insufficient to support his claim. OWCP advised appellant as to the medical and factual evidence required to support his claim. Appellant was given 30 days to provide the requested information.

In response appellant submitted a January 30, 2012 work status form signed by Mr. Lightfoot indicating that appellant was disabled from working until March 14, 2012.

By decision dated April 25, 2012, OWCP denied appellant's claim on the grounds that the evidence did not establish that his diagnosed condition of lumbar strain was causally related to the accepted December 29, 2012 employment incident.

In a letter dated May 23, 2012, appellant's counsel requested an oral hearing before an OWCP hearing representative. A telephonic hearing was held on September 12, 2012.

By decision dated November 29, 2012, the hearing representative affirmed the denial of appellant's claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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 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 employing establishment injury.<sup>3</sup> These are the essential elements of each and every

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<sup>2</sup> *Id.*

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

compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</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>5</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>6</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employing establishment incident caused a personal injury.<sup>7</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>8</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>9</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>10</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>11</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>12</sup>

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<sup>4</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

<sup>6</sup> *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>7</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

<sup>8</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>9</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>10</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>11</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>12</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

## ANALYSIS

OWCP accepted that the December 29, 2011 incident occurred as alleged. However, it found the evidence insufficient to establish that appellant's lumbar strain or any back condition was causally related to the accepted December 29, 2011 employment incident. The issue on appeal is whether the medical evidence of record establishes a causal relationship between the lumbar strain/back condition and the accepted December 29, 2011 employment incident. The Board finds that appellant failed to meet his burden of proof.

Appellant submitted a January 24, 2012 medical report and disability note from Dr. Jeshuran, who diagnosed multilevel degenerative spondylosis at L2-3 and L5-S1. Under history of the injury, he related developing low back pain on December 29, 2011 due to work duties. Dr. Jeshuran offered no opinion as to the cause of the diagnosed back condition or any relationship between the accepted December 29, 2011 employment incident and appellant's claimed back condition. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>13</sup>

Appellant also submitted reports and disability notes signed by Mr. Lightfoot, a nurse. The Board notes, however, that a nurse is not considered a physician as defined under FECA.<sup>14</sup> Accordingly, Mr. Lightfoot's medical opinion regarding diagnosis and causal relationship are of no probative medical value.<sup>15</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>16</sup> Causal relationship must be established by rationalized medical opinion evidence and he failed to submit such evidence.

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report, which described his symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how his claimed back condition was caused or aggravated by the December 29, 2011 employment incident, he has not met his burden of

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<sup>13</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*, 49 ECAB 215, 217 (1997)

<sup>14</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); *G.A.*, Docket No. 09-2153 (issued June 10, 2010) (evidence from a registered nurse had no probative medical value as a nurse is not a "physician" as defined under FECA); *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>15</sup> See *G.A., id.*; *Thomas L. Agee*, 56 ECAB 465 (2005) (A medical report may not be considered probative medical evidence unless it can be established that the person completing the report is a "physician" as defined in 5 U.S.C. § 8101(2))

<sup>16</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).

proof to establish that he sustained an injury in the performance of duty causally related to factors of his 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 failed to meet his burden of proof to establish that his lower back condition/lumbar strain was causally related to the accepted December 29, 2011 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 29, 2012 is affirmed.

Issued: August 19, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board