



causally related to his employment on June 13, 2011. Appellant stopped work on September 29, 2011 and returned to work at regular duty on December 5, 2011.

Appellant was treated by Dr. Janusz Dudek, a Board-certified family practitioner, from June 13 to October 28, 2011. Dr. Dudek noted that appellant's back condition commenced on June 13, 2011 and referenced a magnetic resonance imaging (MRI) scan which showed a disc prolapse at L4-S1. He diagnosed active prolapsed disc and opined that appellant could experience episodes of exacerbation and was not able to perform functions such as walking, bending, turning, lifting or climbing. Dr. Dudek advised that appellant was not able to work from November 7 to 9, 2011. In a certificate of health care provider dated October 18, 2011, he diagnosed low back strain and pain and returned appellant to work on October 21, 2011. Dr. Dudek recommended physical therapy, anti-inflammatory medicines and muscle relaxants. On October 28, 2011 he diagnosed lumbago and back pain and checked a box "yes" that appellant's condition was due to his employment. Dr. Dudek noted that appellant's condition began on June 13, 2011 at work and that he was disabled as of October 29, 2011.

On July 12, 2012 OWCP advised appellant of the evidence needed to establish his claim. It requested that he submit a physician's reasoned opinion addressing the causal relationship of his claimed back condition to specific work factors.

In a statement dated July 24, 2012, appellant indicated that on June 13, 2011 he was chased by a dog while delivering mail and fell backward off a porch injuring his back. His job duties included walking, standing, lifting, pushing, pulling and driving for long periods of time. Appellant had a cortisone injection which helped the pain but had trouble bending, standing and lifting.

In a June 20, 2011 report, Dr. Dudek stated that appellant reported back pain which began a week prior while delivering mail. Appellant was chased by a dog and fell down stairs backwards and struck his back. Dr. Dudek noted bilateral lumbosacral paraspinal muscle tenderness with a negative straight leg raise. He diagnosed lumbago, migraine and essential hypertension. Dr. Dudek noted that appellant was disabled from June 13 to 26, 2011 and could return to work on June 27, 2011 without restrictions. On July 1, 2011 he noted that appellant reported that his back was improved. Appellant returned to work on June 27, 2011 but could not work more than a few hours due to low back pain. Dr. Dudek found lumbar spine paraspinal muscle tenderness. He excused appellant from work from June 27 to July 4, 2011 and released him to regular duties on July 5, 2011. In reports dated October 28 and November 8, 2011, Dr. Dudek addressed appellant's persistent symptoms of low back pain, throbbing and radiating into his buttocks which was worse with lifting, bending, turning, walking up stairs or pulling and pushing. He diagnosed backache with radiculopathy and essential hypertension. Appellant was disabled from November 7 to 9, 2011 and could return to work on November 10, 2011. On February 10, 2012 Dr. Dudek noted that he treated appellant for chronic back pain. An MRI scan showed mild to moderate bulging discs. Dr. Dudek noted that appellant was not responding to pain medications, steroids or therapy and recommended another course of systemic steroids. He returned appellant to work with restrictions. In an undated attending physician's supplemental statement, Dr. Dudek diagnosed backache and bulging disc by MRI scan. He

noted that appellant was partially disabled but could return to work on February 11, 2012 subject to restrictions.

On September 30, 2011 appellant was seen by Dr. Marta Dudek, a Board-certified family practitioner and an associate of Dr. Janusz Dudek, who noted low back pain which radiated into the scrotum that began two days prior when he lifted heavy objects. Appellant was treated in an emergency room the night before for back pain and was diagnosed with a urinary tract infection. Dr. Marta Dudek diagnosed lumbago and urinary tract infection. On October 18, 2011 appellant was treated by Dr. Ejiroghene Akpofure, a Board-certified family practitioner, for bladder infection and low back pain. Dr. Akpofure noted findings of limited range of motion of the back and diagnosed lumbago, hypertension and recommended physical therapy. An MRI scan of the lumbar spine dated November 1, 2011 revealed mild disc protrusion at L5-S1 with disc bulging at L4-5 with no evidence of significant nerve compression or spinal stenosis. A February 17, 2012 radiology report noted that appellant underwent fluoroscopic guided needle localization of the spine.

In an October 11, 2012 decision, OWCP denied the claim. It found that the medical evidence was insufficient to establish that appellant's claimed back condition were causally related to her work activities.

Appellant requested reconsideration on December 2, 2012. He submitted a June 8, 2012 duty status report and a November 14, 2012 note from Dr. Janusz Dudek, who diagnosed lumbago and advised that appellant could work with restrictions. On December 1, 2012 Dr. Dudek noted treating appellant since April 2004 for complaint of mechanical low back pain with radiculopathy reported in 2007. He noted that appellant had a second episode of low back pain with radiculopathy on March 13, 2009 which was related to a fall. He was treated with medication, exercise and physical therapy. On June 29, 2010 Dr. Dudek treated appellant for a work-related accident after appellant was chased by a dog and had a low back injury. He noted that since the work accident appellant had progressive low back pain with radiculopathy that was not responding to medication or epidural injections. Dr. Dudek opined that with regard to the June 2010 work accident appellant suffered from chronic back pain condition that was significantly exacerbated by the accident. He further opined that his recent lower back pain and inability to perform his normal duties was related to the work-related accident.

In a decision dated April 25, 2013, OWCP denied modification of the October 11, 2012 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the

manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.<sup>3</sup>

### ANALYSIS

It is not disputed that appellant's duties as city carrier included walking, standing, lifting, pushing, pulling and driving for prolonged periods of time while delivering mail. It is also not disputed that appellant has been diagnosed with chronic low back pain, lumbago and radiculopathy in connection with this claim. However, appellant has not submitted sufficient medical evidence to establish that any of these conditions are causally related to specific employment factors or conditions.

Reports from Dr. Janusz Dudek noted treating appellant since April 2004 with his first complaints of mechanical low back pain with radiculopathy in 2007 and a second episode of lower back pain with radiculopathy on March 13, 2009 related to a fall. On June 29, 2011<sup>4</sup> appellant reported a work incident where he was chased by a dog and sustained a low back injury. Dr. Dudek noted that, since that time, appellant had increased low back pain with radiculopathy. He opined that appellant's chronic back condition was significantly exacerbated by the June 2011 work accident and further opined that appellant's recent lower back pain and inability to perform his normal duties were related to the work accident. Although Dr. Dudek supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's low back pain and

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<sup>2</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>4</sup> This appears to be a typographical error and should read June 2011.

radiculopathy and work factors.<sup>5</sup> He did not explain the process by which prolonged walking and standing would cause or aggravate the diagnosed conditions why such conditions would not be due to any nonwork factors.<sup>6</sup> In a June 20, 2011 report, Dr. Dudek treated appellant for low back pain that began a week prior while delivering mail when he was chased by a dog and fell down stairs hitting his back. He diagnosed lumbago, migraine and essential hypertension. Dr. Dudek noted that appellant was unable to work June 13 to July 4, 2011 due to his condition. However, he appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work-related. To the extent that Dr. Dudek is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's lumbar condition and the factors of employment believed to have caused or contributed to such condition.<sup>7</sup> In an October 28, 2011 form report, Dr. Dudek diagnosed lumbago and checked a box "yes" that his condition was due to his employment. He noted appellant's condition began on June 13, 2011 while he was working and indicated that appellant was disabled from October 29, 2011. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>8</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

Other reports from Dr. Janusz Dudek do not offer a clear opinion on how appellant's employment duties caused or aggravated his diagnosed condition.<sup>9</sup> Consequently, these reports are of limited probative value and do not establish appellant's occupational disease claim.

Appellant also submitted a September 30, 2011 report from Dr. Marta Dudek who treated him in follow up for low back pain that began two days prior when he was lifting heavy objects. On October 18, 2011 he was treated by Dr. Akpofure in follow up for bladder infection and low back pain and who diagnosed lumbago and essential hypertension. However, these reports are insufficient to establish appellant's claim as they do not specifically address how work conditions caused or contributed to any diagnosed medical conditions. The remainder of the medical evidence, including reports of diagnostic testing, also fail to provide an opinion on the causal relationship between appellant's job and his diagnosed lumbar condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

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<sup>5</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>6</sup> Although appellant filed a claim for an occupational disease, Dr. Dudek appears rather to attribute appellant's condition to the June 13, 2011 incident instead of to work factors occurring over more than one work shift. The Board notes that an occupational disease claim is appropriate for a condition produced by the work environment over a period longer than a single workday or shift, while a traumatic injury relates to a condition caused by an incident or series of incidents or events within a single workday or shift. *See* 20 C.F.R. § 10.5(y),(ee).

<sup>7</sup> *Supra* note 5.

<sup>8</sup> *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006); *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

<sup>9</sup> *A.D.*, 58 ECAB 149 (2006) (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).

The Board finds that the medical evidence does not establish that appellant's lumbar spine condition is causally related to his employment. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>10</sup> Causal relationships must be established by rationalized medical opinion evidence. As noted, the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP therefore properly found that appellant did not meet his burden of proof in establishing his claim.

On appeal, appellant disagrees with OWCP's decision denying his claim for compensation and notes that he submitted sufficient evidence to establish his claim. As noted above, the medical evidence does not establish that appellant's conditions were causally related to his employment. Reports from appellant's physicians failed to provide sufficient medical rationale explaining how appellant's injuries were causally related to particular employment factors.

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 did not meet his burden of proof to establish that his claimed conditions were causally related to his employment.

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<sup>10</sup> See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 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