

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

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**E.T., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
TRANSPORTATION SECURITY  
ADMINISTRATION, San Jose, CA, Employer**

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**Docket No. 13-1643  
Issued: December 4, 2013**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 1, 2013 appellant, through her attorney, filed a timely appeal from a May 28, 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 (FECA)<sup>1</sup> 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 met her burden of proof to establish that she sustained a back condition in the performance of duty causally related to factors of her federal employment.

On appeal, counsel contends that OWCP's decision was contrary to fact and law.

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

## **FACTUAL HISTORY**

On September 5, 2012 appellant, then a 55-year-old transportation security officer, filed an occupational disease claim (Form CA-2) alleging a back strain due to factors of her federal employment, including lifting heavy bags at work. She did not stop work but was placed on light duty.

In an October 4, 2012 letter, OWCP notified appellant of the deficiencies of her claim and allotted her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a narrative statement that she lifted a heavy bag at work and her back began to hurt. She stated that she heard a popping noise in her back and could not get out of bed due to muscle spasms and pain.

Appellant submitted reports dated September 5 through December 3, 2012 from Dr. Richard Gilliam, a Board-certified family practitioner, who diagnosed low back pain and "hyperextension of joint." She complained of mid-thoracic and lumbar back pain radiating down to the anterior thigh, right leg to foot. Dr. Gilliam noted that appellant's chronic back pain was precipitated by a lifting event at work. He restricted her from lifting or carrying more than five pounds.

By decision dated December 18, 2012, OWCP denied the claim on the basis that the medical evidence failed to establish a causal relationship between the diagnosed back conditions and the implicated employment factors.

On December 26, 2012 appellant, through her attorney, requested an oral hearing by telephone before an OWCP hearing representative. She submitted reports dated December 21, 2012 and February 25, 2013 from Dr. Gilliam who opined that her low back pain was causally related to lifting heavy bags at work. Appellant also submitted physical therapy notes dated January 14 and 28, 2013. A January 7, 2013 magnetic resonance imaging (MRI) scan report revealed active degenerative disc disease at T10-11 and chronic older degenerative changes at L4-5.

On March 14, 2013 a telephone hearing was held before an OWCP hearing representative. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence. She submitted a December 25, 2012 report from Dr. Moira Petirs, an emergency medicine physician, who diagnosed low back pain and stated that appellant reported injuring her back while lifting a heavy bag at work.

By decision dated May 28, 2013, an OWCP hearing representative affirmed the December 18, 2012 decision. She found that Dr. Gilliam did not adequately describe the work events giving rise to appellant's treatment or a discussion of causal relationship.

## 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 timely filed within the applicable time limitation period of FECA, and that an injury<sup>3</sup> was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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>6</sup>

## ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish a claim that federal employment factors caused or aggravated her back condition. Appellant submitted a statement in which she identified the factors of employment that she believed caused the condition, including lifting heavy bags at work. However, in order to establish a claim that she sustained an employment-related injury, she must also submit rationalized medical evidence which explains how her medical conditions were caused or aggravated by the implicated employment factors.<sup>7</sup>

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

<sup>3</sup> OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>4</sup> See *O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> See *D.R.*, Docket No. 09-1723 (issued May 20, 2010). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> See *O.W.*, *supra* note 4.

<sup>7</sup> See *A.C.*, Docket No. 08-1453 (issued November 18, 2008); *Donald W. Wenzel*, 56 ECAB 390 (2005); *Leslie C. Moore*, 52 ECAB 132 (2000).

In his reports, Dr. Gilliam diagnosed low back pain and “hyperextension of joint.” He stated that appellant’s chronic back pain was precipitated by a lifting event at work and opined that her low back pain was causally related to lifting heavy bags at work. Dr. Gilliam did not fully address the nature of the lifting activities appellant performed at work. Further, he failed to provide a rationalized opinion explaining how factors of appellant’s federal employment, such as lifting heavy bags at work, caused or aggravated her back condition. Dr. Gilliam noted that appellant’s condition occurred while she was at work, but such generalized statements do not establish causal relationship because they merely repeat the employee’s allegations and are unsupported by adequate medical rationale explaining how her physical activity at work caused or aggravated her diagnosed conditions.<sup>8</sup> Thus, the Board finds that the reports from Dr. Gilliam are insufficient to establish that appellant sustained an employment-related injury.

On December 25, 2012 Dr. Petirs diagnosed low back pain and indicated that appellant reported injuring her back while lifting a heavy bag at work. As stated above, the Board finds that such generalized statements do not support causal relationship. Dr. Petirs merely repeated appellant’s allegations and did not provide medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.<sup>9</sup> The Board finds that the report from Dr. Petirs is insufficient to establish that appellant sustained an employment-related injury.

The physical therapy notes dated January 14 and 28, 2013 are of no probative value as physical therapists are not physicians under FECA.<sup>10</sup> As such, the Board finds that appellant did not meet her burden of proof with these submissions.

The January 7, 2013 MRI scan report is diagnostic in nature and therefore does not address causal relationship. As such, the Board finds that it is insufficient to establish appellant’s claim.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she failed to meet her burden of proof to establish a claim.

On appeal, counsel contends that OWCP’s decision was contrary to fact and law. For the reasons stated above, the Board finds the attorney’s arguments are not substantiated.

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.

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<sup>8</sup> See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

<sup>9</sup> *Id.*

<sup>10</sup> 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 also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained a back condition in the performance of duty causally related to factors of her federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 28, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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