

FACTUAL HISTORY

On July 24, 2012 appellant, then a 55-year-old plastic fabricator, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right inguinal hernia in the performance of duty on July 16, 2012. His claimed injury occurred after operating a 200 pound orbital floor stripper for approximately two hours a day for a week. On July 17, 2012 appellant awoke with significant pain and swelling. The employing establishment controverted his claim in statements from a supervisor and a coworker.

In a narrative statement dated July 19, 2012, Gail Nelson, a supervisor, described the events alleged to have caused appellant's right inguinal hernia. She stated that he was sent to a bearing shop on or around July 9, 2012 on light duty. Appellant was assigned to help Carl Dendy, a custodial worker, with cleaning, stripping, mopping and waxing the bearing shop, oxygen shop and rubber shop as needed. However, Mr. Dendy did most of the buffing and stripping of the floors, while appellant was sitting or standing around talking. On July 12, 2012 he and appellant stripped and mopped a room. Ms. Nelson asked Mr. Dendy if appellant was helping with the floors because she saw that appellant was sitting around with a mop. Mr. Dendy responded that appellant was helping, but that he had done most of the buffing himself. On July 16, 2012 appellant used the buffer to strip a part of a room in the oxygen shop for about two hours. Later that day, Ms. Nelson noticed that he was standing around the oxygen shop and she sent him to the bearing shop to dust mop the walkway from the front door to the back. She noted that appellant at no time stated that he had hurt himself or complained of being in any pain.

In a narrative statement dated July 19, 2012, Mr. Dendy described the events alleged to have caused appellant's condition. He noted that appellant operated the buffer for approximately eight hours during the two-week period he worked with him. On July 12, 2012 appellant returned from lunch and told Mr. Dendy that he was hurting, without specifying where or what type of pain he experienced. On July 16, 2012 Ms. Nelson assigned them to clean, strip and mop an area that had previously contained a lathe. Appellant helped to strip about one-third of the room, then began to talk to other coworkers. Ms. Nelson reassigned him to dust mop the bearing shop's main aisle. While Mr. Dendy was showing appellant where the dust mops were kept, appellant stated that he did not want to work in this area anymore. After appellant finished dust mopping, he told him that he was going to try and find somewhere to hide.

In a medical referral and supervisor's report dated July 19, 2012, a physician's assistant and a supervisor checked boxes indicating that it was questionable whether appellant's injury was occupational. The physician's assistant noted a possible hernia, restrictions to desk work only and referral to a surgeon.

In a consent form for surgical procedure dated July 23, 2012, appellant authorized Dr. Anthony J. Pacitti, a Board-certified surgeon, to repair a right inguinal hernia.

In a report dated July 23, 2012, Dr. Pacitti described the history of appellant's present condition. He stated that appellant had worked several weeks before with a floor sander, experiencing acute pain in the right inguinal area and subsequently had marked swelling of the right hemiscrotum. Dr. Pacitti noted that on further questioning, although the acute episode of

the condition was described as only a few weeks old, appellant noted that he did have some discomfort in the area several months before. Appellant stated that he had an ultrasound in March 2012, which showed only a left hydrocele. Dr. Pacitti stated that his assessment that appellant had a very large right inguinal hernia.

In a July 25, 2012 letter, Dr. Pacitti noted that appellant was to receive a surgical procedure to correct a right inguinal hernia and would need to be excused from work until August 17, 2012. In an operative report of the same date, he stated that his findings that appellant had a large indirect chronic right inguinal hernia and a moderately-sized direct inguinal hernia defect of the floor of the inguinal canal. Dr. Pacitti stated that appellant's cremasteric muscle fibers were markedly hypertrophic.

In a chronological record of medical care dated July 19, 2012, a physician's assistant noted that appellant had no symptoms on July 16, 2012, but that he woke up the next day with a testicle full of fluid. Appellant attributed his condition to use of a stripping buffer on July 16, 2012, but denied any pain while using the buffer.

By letter dated August 10, 2012, the employing establishment challenged appellant's claim, on the basis that he had failed to provide the required rationalized medical opinion evidence necessary to prove causal relation. It also asserted that the treatment sought by him was necessary only due to the progression of his preexisting chronic nonwork-related condition. The employing establishment stated that Dr. Pacitti's operative report of July 25, 2012 noted that appellant's condition had existed for such a time as to effect marked hypertrophy of the cremasteric muscle fibers. It noted that appellant attributed the right inguinal hernia to the use of a floor buffer, yet denied any pain while using the buffer, in the chronological record of medical care dated July 19, 2012.

In an attending physician's report dated July 30, 2012, Dr. Pacitti checked a box indicating that appellant's condition was caused or aggravated by employment activity, explaining that his right inguinal hernia was preexisting, but aggravated by employment activity. He recommended work restrictions of no heavy lifting over 10 pounds and no strenuous activity.

In a Form CA-7 dated March 4, 2013, appellant requested to buyback leave for time lost from work from July 23 to August 17, 2012. A time analysis (Form CA-7a) dated March 4, 2013 indicated that he lost time from work on these dates due to surgery and recovery.

By letter dated March 12, 2013, OWCP requested additional factual and medical evidence from appellant. It noted that the factual evidence submitted was insufficient to establish that he was injured in the performance of duty and the medical evidence submitted was insufficient to establish causal relationship. OWCP stated that, based on appellant's description of events, his claim ought to have been filed as an occupational disease claim. It afforded him 30 days to submit additional evidence. OWCP also requested additional medical and factual evidence from the employing establishment, requesting that it supply appellant's light-duty work restrictions, a description of the physical requirements for the position of plastic fabricator and treatment notes from the employing establishment medical facility.

By e-mail dated April 1, 2013, the employing establishment responded to OWCP's inquiries. It stated that appellant was not on work restrictions as a sheet metal mechanic, but that he was on vision restrictions as a plastics fabricator at the claimed time of injury.

In a report dated August 20, 2012, Dr. Karen M. Allstadt, an internist, reported that appellant had a previous history of work restrictions for vision.³ She noted that he had occasional right groin pain with certain movements after his surgery.

By decision dated April 15, 2013, OWCP denied appellant's claim, finding that the medical evidence was not sufficient to support that his right inguinal hernia condition was causally related to the July 16, 2012 traumatic event. As the underlying claim was denied, it also denied his request to buyback leave.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

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) a 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 the claimant.

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.⁶ 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

³ The case record does not contain appellant's specific work restrictions before July 16, 2012. It also does not contain a record of his light-duty appointment to a position as a custodial assistant.

⁴ *Gary J. Watling*, 52 ECAB 278, 279 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Michael E. Smith*, 50 ECAB 313, 315 (1999).

⁶ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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.⁹ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁰

ANALYSIS

Appellant alleged that he sustained a right inguinal hernia as a result of using an orbital floor stripper in the performance of duty.¹¹ OWCP accepted that the employment factors may have occurred, that a medical condition was diagnosed and that he was within the performance of duty. It denied the claim, finding that the medical evidence was insufficient to support that appellant's condition was caused or aggravated by factors of employment. The Board finds that he failed to meet his burden of proof to establish an injury as a result of factors of his federal employment.

Appellant submitted documents from Dr. Pacitti and Dr. Allstadt including diagnoses, treatment notes and references to work restrictions. However, these documents did not contain an opinion that he sustained any specific condition due to factors of his federal employment. In a consent form for surgical procedure dated July 23, 2012, appellant authorized Dr. Pacitti to repair a right inguinal hernia. By letter dated July 25, 2012, Dr. Pacitti noted that appellant was to receive a surgical procedure to correct a right inguinal hernia on that day and would need to be excused from work until August 17, 2012. In an operative report of the same date, he stated that his findings that appellant had a large indirect chronic right inguinal hernia and a moderately-sized direct inguinal hernia defect of the floor of the inguinal canal. Dr. Pacitti stated that appellant's cremasteric muscle fibers were markedly hypertrophic. In a report dated

⁷ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁸ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117, 123 (2005).

⁹ *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

¹⁰ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

¹¹ A traumatic injury means a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined 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). As appellant alleged that his right inguinal hernia resulted from operation of a floor stripper over the course of a week, his claim is for an occupational disease.

December 9, 2011, Dr. Allstadt noted that appellant had passed the vision requirements for the position of sheet metal mechanic and that he was released without limitations. In a report dated March 9, 2012, she noted that he could not perform tasks as a plastic fabricator requiring corrected vision and released him to work with duty limitations. In a report dated August 20, 2012, Dr. Allstadt stated that appellant had a previous history of work restrictions for vision. She noted that he had occasional right groin pain with certain movements after his surgery for a right inguinal hernia.

The Board has held that medical evidence lacking an opinion as to the causal relationship between an appellant's injury and specified work-related factors is of diminished probative value on the issue of causal relationship.¹² Dr. Pacitti's July 23, 2012 consent form and July 25, 2012 letter contain diagnoses, but lack opinions as to the causal relationship between those diagnoses and work-related factors. Dr. Allstadt's reports contain diagnoses and references to duty restrictions, but similarly lack rationalized medical opinion on causal relationship. Therefore, these documents are not sufficient to establish appellant's claim.

Appellant submitted two reports from Dr. Pacitti containing opinions on the causal relationship between the right inguinal hernia and work-related factors. In a report dated July 23, 2012, Dr. Pacitti described the history of appellant's present condition. He stated that appellant had worked several weeks before with a floor sander, experiencing acute pain in the right inguinal area and subsequently had marked swelling of the right hemiscrotum. Dr. Pacitti noted that on further questioning, although the acute episode of the condition was described as only a few weeks old, appellant noted that he did have some discomfort in the area several months before. Appellant stated that he had an ultrasound in March 2012, which showed only a left hydrocele. Dr. Pacitti stated that his assessment was that appellant had a very large right inguinal hernia. In an attending physician's report dated July 30, 2012, he checked a box indicating that appellant's condition was caused or aggravated by employment activity, explaining that his right inguinal hernia was preexisting, but aggravated by employment activity.

As noted, appellant must submit medical evidence with a rationalized opinion on the causal relationship between a diagnosed condition and the identified employment factors. To be rationalized, the opinion of a 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.¹³ Dr. Pacitti identified certain work factors and provided diagnoses, but failed to provide a detailed explanation as to how specific physical findings supported his opinion on causal relationship. He asserted that appellant's condition was caused or aggravated by employment activities, but did not explain how those activities caused or aggravated the condition. The Board has held that the fact that a condition manifests itself or worsens during a period of employment¹⁴ or that work activities produce symptoms revelatory of an underlying condition does not raise an inference of causal

¹² *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ *Supra* note 9.

¹⁴ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

relationship between a claimed condition and employment factors.¹⁵ Therefore, Dr. Pacitti's July 23 and 30, 2012 reports do not establish appellant's claim for a work-related right inguinal hernia.

Appellant also submitted documents from a physician's assistant. Physicians' assistants do not qualify as physicians under FECA and, therefore, their reports do not qualify as probative medical evidence supportive of a claim for federal workers' compensation, unless such reports are countersigned by a physician.¹⁶ None of the documents from the physician's assistant contain a countersignature from a physician. Therefore, they do not qualify as probative medical evidence supportive of a claim for compensation.

On appeal, appellant asserts that Ms. Nelson directed him to operate a floor stripper with the knowledge that he was on light duty, and that this would not be within the guidelines for light duty. While the case record does not contain his specific work restrictions from before July 16, 2012, it appears that these restrictions dealt with vision impairment, and would not prevent him from performing tasks requiring physical strength and movement such as operation of a floor stripper. Therefore, it would not violate appellant's work restrictions for Ms. Nelson to assign him to perform this task.

As appellant did not submit medical evidence in support of his claim containing a physician's rationalized opinion that he developed a right inguinal hernia as a result of identified employment factors, he has not met his burden of proof to establish causal relationship between his condition and work-related duties.

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 establish that he sustained a right inguinal hernia causally related to factors of his federal employment.

¹⁵ *B.B.*, Docket No. 13-256 (issued August 13, 2013); *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

¹⁶ *See* 5 U.S.C. § 8101(2); *Lyle E. Dayberry*, 49 ECAB 369, 372 (1998).

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 24, 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