

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

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C.B., Appellant )

and )

DEPARTMENT OF TRANSPORTATION, )  
FEDERAL AVIATION ADMINISTRATION, )  
Amarillo, TX, Employer )

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**Docket No. 12-1604**  
**Issued: January 10, 2013**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 23, 2012 appellant filed timely appeals of April 19 and June 15, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP). 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 the case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained a traumatic injury while in the performance of duty on February 17, 2012.

**FACTUAL HISTORY**

On February 24, 2012 appellant, then a 44-year-old air traffic control specialist, filed a traumatic injury claim alleging that he strained his lower back while moving a filing cabinet on

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

February 17, 2012. The employing establishment controverted the claim on the grounds that he moved furniture in and out of the union's office and engaged in personal activity not within the course of employment.

In a March 13, 2012 letter, OWCP advised appellant that additional information was needed to establish his claim. It gave him 30 days to submit a statement detailing how moving furniture on February 17, 2012 arose within the scope of his employment and a report from a qualified physician explaining how this activity caused or contributed to a diagnosed condition.

Appellant specified in a March 24, 2012 statement that he was transporting surplus furniture from an air traffic control tower to a storage building on February 17, 2012 under the direction of his supervisor. He added that he previously sustained a cervical disc rupture in 2004 and a lower back injury in 2008.

A November 3, 2008 magnetic resonance imaging (MRI) scan obtained by Dr. Rakesh Shah, a Board-certified diagnostic radiologist, exhibited L4-L5 and L5-S1 disc protrusions. A March 19, 2012 MRI scan report from Dr. Gail Bentley, a Board-certified anatomic and clinical pathologist, showed L3-L4 central disc protrusion and bilateral facet hypertrophy, L4-L5 left paramedian disc protrusion, lateral recess narrowing, and neural foraminal stenosis and L5-S1 central disc extrusion.

In an April 5, 2012 note, Dr. Vinod S. Patel, an internist, diagnosed appellant with acute lumbar strain and chronic back pain. He remarked that appellant also complained of left lower extremity radicular pain.

By decision dated April 19, 2012, OWCP denied appellant's claim, finding the medical evidence insufficient to establish that a lumbar condition resulted from the accepted February 17, 2012 employment incident.

Appellant requested reconsideration on May 29, 2012 and submitted a copy of Dr. Bentley's March 19, 2012 MRI scan report.

On June 15, 2012 OWCP denied modification of the April 19, 2012 decision.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence,<sup>2</sup> including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.<sup>3</sup> The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.<sup>4</sup>

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<sup>2</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>3</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>4</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>5</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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>6</sup>

### ANALYSIS

The case record supports that appellant moved a filing cabinet while in the performance of duty on February 17, 2012. The Board finds, however, that he did not establish his traumatic injury claim because the medical evidence did not establish that the accepted employment incident caused or contributed to a lumbar condition.

In an April 5, 2012 note, Dr. Patel diagnosed appellant with acute lumbar strain and chronic back pain. He also pointed out that appellant had left lower extremity symptoms. A prior March 19, 2012 MRI scan report from Dr. Bentley confirmed L3-L4 central disc protrusion and bilateral facet hypertrophy, L4-L5 left paramedian disc protrusion, lateral recess narrowing, and neural foraminal stenosis and L5-S1 central disc extrusion. However, neither Dr. Patel nor Dr. Bentley discussed whether the lumbar condition was due to appellant's federal employment activity. Therefore, their opinions were of diminished probative value on the issue of causal relationship.<sup>7</sup> Moreover, Dr. Shah's November 3, 2008 MRI scan report was immaterial because it predated the February 17, 2012 work event.<sup>8</sup> In the absence of rationalized medical opinion evidence, appellant failed to meet his burden of proof.

Appellant may submit new evidence or argument as part of a formal 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>5</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>6</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009). See also *John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to a diagnosed medical condition).

<sup>8</sup> See *F.W.*, Docket No. 10-1975 (issued May 13, 2011).

**CONCLUSION**

The Board finds that appellant did not establish that he sustained a traumatic injury while in the performance of duty on February 17, 2012.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 15 and April 19, 2012 merit decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: January 10, 2013  
Washington, DC

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

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

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