

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

---

N.D., Appellant )

and )

**DEPARTMENT OF THE ARMY, ARMY CORP  
OF ENGINEERS, Louisville, KY, Employer** )

---

**Docket No. 13-515  
Issued: May 15, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 27, 2012 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs (OWCP) dated September 26, 2012. 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 this case.

**ISSUE**

The issue is whether appellant has established that he sustained an aggravation of his preexisting sacroiliac joint dysfunction condition on January 26, 2012.

**FACTUAL HISTORY**

On January 26, 2012 appellant, a 62-year-old lock and dam operator, filed a claim for benefits, alleging that he injured his lower back while picking up large electrical cables. He submitted several form reports from Brad Hutchins, a physician's assistant, which noted

---

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

complaints of back pain on examination and indicated that he had sacroiliac (SI) joint dysfunction.

By letter to appellant dated February 8, 2012, OWCP advised him that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to the alleged January 26, 2012 work incident.

In a Form CA-20 co-signed by Dr. Ted Davies, a specialist in neurosurgery, it was indicated that appellant had tenderness in his lower back. Dr. Davies related that appellant injured his lower back on January 26, 2012 while picking up electrical cables and diagnosed lumbar disc displacement and SI joint dysfunction. He checked a box indicating that the condition found was caused or aggravated by an employment activity.

By decision dated March 19, 2012, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim that sustained an aggravation of his preexisting SI joint dysfunction condition on January 26, 2012.

On April 18, 2012 appellant requested an oral hearing, which was held on August 10, 2012. He stated at the hearing that he initially injured his lower back in 2007 and that he reinjured his back on January 26, 2012.<sup>2</sup>

In reports dated May 9 and July 1, 2011, received by OWCP on April 3, 2012, Dr. Monte E. Rummelman, Board-certified in physical medicine and rehabilitation, noted complaints of lower back pain and found that appellant had left S1 joint dysfunction. He stated that a lumbar magnetic resonance imaging (MRI) scan indicated L5-S1 disc protrusion.

In a January 26, 2012 Form CA-20 co-signed by Dr. Davies, it was indicated that appellant had experienced pain while bending over to pick up electrical cables on January 26, 2012. He checked a box indicating that the condition found was caused or aggravated by an employment activity.

By decision dated September 26, 2012, an OWCP hearing representative affirmed the March 19, 2012 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of establishing that 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

---

<sup>2</sup> The hearing representative noted that appellant had accepted two other OWCP claims: claim number xxxxxx326, for a February 17, 2003 slip and fall, which OWCP accepted for lumbar strain, cervical strain and left hip strain; and claim number xxxxxx905, for an April 9, 2007 injury sustained when he bent over to move electric cable, which OWCP accepted for displacement of lumbar intervertebral disc without myelopathy.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

time limitation period of FECA, that an injury was sustained 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 employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</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. 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 employment incident caused a personal injury.<sup>7</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>8</sup>

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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>9</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### ANALYSIS

It is uncontested that appellant experienced back pain while picking up electrical cables on January 26, 2012. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.<sup>10</sup> Appellant has not submitted rationalized, probative medical evidence to establish that the January 26, 2012 employment incident caused a personal injury and that the work accident would have been competent to cause the claimed injury.

Appellant submitted reports from Drs. Davies and Rummelman. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of a physician’s knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated

---

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(ee).

<sup>8</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

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

<sup>10</sup> *Carlone*, *supra* note 6.

conclusions.<sup>11</sup> Appellant did not provide a report from a physician which presented a diagnosis of appellant's condition and sufficiently addressed how this condition was causally related to the January 26, 2012 work incident. The medical reports from Dr. Davies did not explain how medically appellant would have sustained an aggravation of his preexisting sacroiliac joint dysfunction condition while picking up electrical cables on January 26, 2012. He merely co-signed form reports from a physician's assistant which indicated causal relationship with a checkmark and offered no medical explanation of their opinions.<sup>12</sup> Thus Dr. Davies' opinion regarding causal relationship is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.<sup>13</sup> He did not adequately describe appellant's accident or how the accident would have caused the claimed condition. The May and June 2011 reports from Dr. Rummelman are of limited probative value because they predate the alleged January 26, 2012 work incident.

Appellant has also submitted reports and notes signed by a nurse practitioner and a physician's assistant. Because healthcare providers such as nurses, acupuncturists, physicians' assistants and physical therapists are not considered "physicians" under FECA, their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability or causal relationship.<sup>14</sup> Therefore, the reports signed by the nurse practitioner and physical therapist do not constitute competent medical evidence and are insufficient to satisfy appellant's burden. There is, therefore, no rationalized evidence in the record that appellant's low back injury was work related. Therefore, appellant failed to provide a medical report from a physician that explains how the work incident of January 26, 2012 caused or contributed to the claimed aggravation of his preexisting SI joint dysfunction condition.

OWCP advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the January 26, 2012 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained an aggravation of his preexisting SI joint dysfunction condition in the performance of duty. OWCP properly denied appellant's claim for compensation.

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.

---

<sup>11</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>12</sup> See *Calvin E. King*, 51 ECAB 394, 400 (2000) (numerous form reports from a physician who checked a "yes" box indicating a causal relationship between appellant's spinal stenosis and his employment had little probative value absent supporting rationale and were insufficient to establish causation).

<sup>13</sup> *William C. Thomas*, 45 ECAB 591 (1994).

<sup>14</sup> 5 U.S.C. § 8101(2); see also *G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

**CONCLUSION**

The Board finds that appellant has failed to establish that he sustained an aggravation of his preexisting SI joint dysfunction condition on January 26, 2012.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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