

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

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C.W., Appellant )

and )

DEPARTMENT OF THE TREASURY, )  
INTERNAL REVENUE SERVICE, )  
Philadelphia, PA, Employer )

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**Docket No. 13-1362  
Issued: November 22, 2013**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On May 20, 2013 appellant, through counsel, filed a timely appeal of an April 1, 2013 merit decision 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 this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant established an injury in the performance of duty on July 31, 2012.

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

<sup>2</sup> The Board notes that, following the April 1, 2013 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

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

### **FACTUAL HISTORY**

On August 1, 2012 appellant, then a 53-year-old customer service representative, filed a traumatic injury claim alleging that on July 31, 2012 she sustained a right knee injury due to her chair rolling out from under her when she went to sit down.

By letter dated August 3, 2012, OWCP advised appellant of the medical and factual evidence required to support her claim.

In an August 15, 2012 workers' compensation injury report, Stephanie McCune, a certified physician's assistant, diagnosed a lumbar strain and reported an injury that same date.

In an August 20, 2012 report, Dr. George E. Fisher, a treating Board-certified internist, diagnosed bilateral lower extremity neuropathy and lumbar pain due to her July 31, 2012 fall. He indicated that she was unable to work at that time.

By decision dated September 13, 2013, OWCP denied appellant's claim on the grounds that she failed to establish fact of injury.

In a letter dated September 20, 2012, appellant's counsel requested a telephonic hearing before an OWCP hearing representative, which was held on January 15, 2013.

On October 11, 2012 OWCP received a September 18, 2012 report from Dr. Fisher releasing appellant to work effective September 19, 2012. Dr. Fisher noted that appellant would continue to receive physical therapy for the injuries sustained as a result of the July 31, 2012 employment incident. Diagnoses include post-traumatic cephalgia, cervical and lumbar strain/sprain, bilateral knee pain, myospasms and myalgia.

OWCP subsequently received an August 20, 2012 report by Dr. Fisher which provided a history of the July 31, 2012 employment incident and physical examination findings. Diagnoses included: post-traumatic cephalgia; lumbar spine sprain/strain with injuries to the myoligamentous supporting structures; cervical spine strain/sprain with injuries to the myoligamentous supporting structures; bilateral knee sprain/strain; myospasms and myalgia. Dr. Fisher reported that appellant was seen on August 20, 2012 for headaches and bilateral knee, low back and neck pain complaints. A physical examination revealed moderate bilateral paravertebral muscle spasms of the cervical spine, trapezius and lumbosacral spine.

A November 14, 2012 magnetic resonance imaging (MRI) scan of the lumbar spine revealed L3-4 disc degeneration. The record also contains a November 14, 2012 MRI scan of the right knee showing mild degenerative osteoarthritic changes and broad oblique posterior medial meniscus horn tear.

In a December 14, 2012 form report, Dr. Fisher provided physical findings and history of injury. He diagnosed lumbar spine sprain/strain with injuries to the myoligamentous supporting structures, cervical spine strain/sprain with injuries to the myoligamentous supporting structures, disc degeneration, posterior medial horn broad oblique tear and mild right knee degenerative

osteoarthritic changes. Dr. Fisher opined that the employment incident was a direct and proximate cause of the diagnosed conditions. He further noted that, while there may be other causes, the July 31, 2012 employment incident was one cause.

On March 8, 2013 appellant submitted a July 31, 2012 emergency room report by Dr. Michael Dumin, a treating Board-certified emergency physician, who reported that appellant was seen in the emergency room that day due to hitting her head and both knees as a result of falling off her chair at work. A physical examination revealed a normal examination of the back, upper extremities and lower extremities. A review of an x-ray interpretation of the knees was negative although degenerative disc disease was seen on the right knee. In concluding, Dr. Dumin diagnosed knee contusion.

By decision dated April 1, 2013, OWCP found that the employment incident occurred as alleged, but denied the claim on the grounds that medical evidence was insufficient to establish causal relationship.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his 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 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 on 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.<sup>6</sup> 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>7</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>8</sup>

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

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>5</sup> S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> B.F., Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

<sup>7</sup> D.B., 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>8</sup> C.B., Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

specific employment incident or to specific conditions of employment.<sup>9</sup> 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 the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>10</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>11</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>12</sup> 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>13</sup>

### ANALYSIS

OWCP accepted that appellant sustained the employment incident as alleged on July 31, 2012. It denied her claim on the grounds that she failed to submit any rationalized medical evidence explaining how the July 31, 2012 employment incident caused or aggravated her preexisting right knee, neck and back conditions.

The Board finds that appellant failed to submit sufficient rationalized medical evidence supporting that her preexisting right knee, neck and back conditions were aggravated by the June 16, 2012 incident.<sup>14</sup>

In support of her claim, appellant submitted reports from Dr. Fisher, her treating Board-certified internist. In reports dated August 20 and September 18, 2012, Dr. Fisher attributed appellant's condition to the July 31, 2012 employment incident. Diagnoses from these reports included post-traumatic cephalgia, lumbar spine and cervical sprain/strains with injuries to the myoligamentous supporting structures, bilateral knee sprain/strain; myospasms and myalgia, lumbar pain and bilateral lower extremity neuropathy due to the July 12, 2012 employment incident. In a December 14, 2012 report, Dr. Fisher diagnosed lumbar spine sprain/strain with injuries to the myoligamentous supporting structures, cervical spine strain/sprain with injuries to the myoligamentous supporting structures, disc degeneration, posterior medial horn broad oblique tear and mild right knee degenerative osteoarthritic changes. He opined that appellant's

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<sup>9</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>10</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>11</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>12</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>13</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>14</sup> See *Robert Broome*, 55 ECAB 339 (2004).

July 31, 2012 incident was the direct and proximate cause of these conditions. Dr. Fisher further stated there may have been other causes of her condition, but that the July 31, 2012 employment incident was one of the causes. Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.<sup>15</sup> In addition, medical reports not containing rationale on causal relationship are entitled to little probative value and are generally insufficient to meet an employee's burden of proof.<sup>16</sup> In view of the lack of any rationale provided by Dr. Fisher on the issue of causal relationship, the Board finds that his opinion fails to establish that appellant's preexisting right knee and back conditions were aggravated by the July 31, 2012 employment incident.

The record also contains a July 31, 2012 emergency room report by Dr. Dumin who noted that appellant was seen that day due to her falling off her chair at work and hitting her head and both knees. Dr. Dumin diagnosed a knee contusion and reported normal physical findings on examination and negative x-ray interpretation with right knee degenerative changes. Medical evidence that offers no opinion regarding the cause of an employee's condition is of diminished probative value and insufficient to meet appellant's burden of proof on causal relationship.<sup>17</sup>

The August 15, 2012 workers' compensation injury report from Stephanie McCune, a certified physician's assistant, is of no probative value as she is not a physician under FECA.<sup>18</sup>

The MRI scans submitted by appellant are diagnostic in nature and therefore do not address causal relationship.<sup>19</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's conditions became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.<sup>20</sup> Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence.

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<sup>15</sup> See *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Roma A. Mortenson-Kindschi*, *supra* note 9; *William C. Thomas*, 45 ECAB 591 (1994) (a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>16</sup> See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *S.S.*, 59 ECAB 315 (2008); *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *William C. Thomas*, *supra* note 15.

<sup>17</sup> *A.F.*, 59 ECAB 714 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>18</sup> Section 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. See *E.K.*, Docket No. 09-1827 (issued April 21, 2010); *J.M.*, 58 ECAB 303 (2007); *Thomas O. Bouis*, 57 ECAB 602 (2006)

<sup>19</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>20</sup> See *D.U.*, *supra* note 16; *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, *supra* note 14; *Anna C. Leanza*, 48 ECAB 115 (1996).

OWCP advised appellant that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, treatment and the physician's opinion, with medical reasons, on the cause of her condition. Appellant failed to submit sufficient medical documentation in response to OWCP's request. As there is no probative, rationalized medical evidence addressing how her claimed right knee, neck and back conditions were caused or aggravated by the July 31, 2012 employment incident, she has not met her burden of proof.

On appeal, counsel contends that OWCP's decision was contrary to fact and law. For the reasons stated above, the Board finds that these 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.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on July 31, 2012, as alleged

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 1, 2013 is affirmed.

Issued: November 22, 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