



## **FACTUAL HISTORY**

On November 21, 2012 appellant, a 47-year-old management assistant, filed a claim alleging that she experienced pain in her low back while lifting and moving boxes on November 20, 2012.

By letter dated January 30, 2013, OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive medical report from a treating physician describing her symptoms with a medical opinion explaining the cause of any diagnosed condition.

In a report dated December 3, 2012, Dr. Reva S. Gill, Board-certified in internal medicine, advised that appellant was currently under his care for a work-related injury which occurred on November 20, 2012. Due to this injury, appellant had been out of work since that date.

By decision dated March 8, 2013, OWCP denied appellant's claim. It found that she failed to provide medical evidence sufficient to establish the claimed injury at the time, place and in the manner alleged.

In a March 15, 2013 report, Dr. Gill indicated that appellant was treated for injuries she sustained while lifting and moving boxes. On examination, appellant had tenderness in her low back region and complained of numbness and tingling in her right leg. Dr. Gill related that appellant was placed on an alternate work assignment while she recovered from her November 20, 2012 work injury. Appellant returned to full duty on February 12, 2013. Dr. Gill advised that the results of a lumbar magnetic resonance imaging (MRI) scan showed a central disc herniation in her lumbar spine.

Appellant submitted several form reports from Dr. Gill who indicated that the history of injury corresponded with the condition claimed.

On March 20, 2013 appellant requested a review of the written record.

By decision dated May 30, 2013, an OWCP hearing representative affirmed the March 8, 2013 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 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

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

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

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

OWCP accepted that appellant experienced pain while lifting and moving boxes at work on November 20, 2012. The issue is whether the employment incident caused the claimed low back injury and this can only be established by probative medical evidence.<sup>10</sup> The Board finds that appellant has not submitted sufficient medical evidence to establish that the November 20, 2012 employment incident caused her claimed injury.

Appellant submitted reports from Dr. Gill, who diagnosed a herniated central disc which he generally attributed to the November 20, 2012 work incident. She did not provide a sufficiently rationalized opinion explaining how the November 20, 2012 work incident caused or contributed to her low back injury.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the 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 conclusions.<sup>11</sup> Although Dr. Gill provided a diagnosis of herniated

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<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(e)(e).

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

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

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

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

disc, she did not submit a report which sufficiently addressed how the condition was causally related to the November 20, 2012 work incident. She stated in her December 3, 2012 report that appellant was currently under her care for a work-related injury which occurred on November 20, 2012. Dr. Gill stated that due to this injury appellant had been off work since that date. In her March 15, 2013 report, she stated that she was treating appellant for injuries she sustained while lifting and moving boxes. Dr. Gill stated on examination that appellant had tenderness in her lower back area and was complaining of numbness and tingling in her right leg. She related that appellant was placed on an alternate work assignment while she recovered from her November 20, 2012 work injury; appellant returned to full duty on February 12, 2013. Dr. Gill advised that the results of a lumbar magnetic resonance imaging (MRI) scan showed that appellant had a central disc herniation in her lumbar spine. She asserted that appellant had with tenderness to palpation, muscle weakness and lower back aches radiating down her right leg.

Dr. Gill's reports did not sufficiently explain how appellant's back injury occurred while moving and lifting boxes on November 20, 2012. She did not adequately describe the accepted incident or how it would have been competent to cause the claimed condition. Dr. Gill's opinion regarding causal relationship is of limited probative value for the further reason that she did not provide adequate medical rationale in support of her conclusions.<sup>12</sup> Her reports do not constitute sufficient medical evidence demonstrating a causal connection between appellant's November 20, 2012 work incident and her claimed lower back condition.

OWCP advised appellant of the evidence required to establish her claim; however, appellant failed to submit such evidence. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to provide a medical opinion which described or explained the medical process as to her November 20, 2012 work accident would have caused the claimed injury. Accordingly, she did not establish a right shoulder 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.

### **CONCLUSION**

The Board finds that appellant has failed to establish that she sustained a lower back injury in the performance of duty on November 20, 2012.

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<sup>12</sup> *William C. Thomas*, 45 ECAB 591 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 30 and March 8, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 13, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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