



## **FACTUAL HISTORY**

On November 22, 2011 appellant, then a 40-year-old immigration services officer, filed a traumatic injury claim (Form CA-1) alleging that he sustained straining injuries to his back, knee and arm, as well as anxiety, in the performance of duties on November 17, 2011. He stated that his injuries occurred as a result of a physical altercation in which an applicant attacked a coworker and appellant intervened to defend his colleague. Appellant was taken to the emergency room *via* ambulance after the altercation occurred.

In support of his claim, appellant submitted emergency treatment discharge notes dated November 17, 2011 from Dr. Ermany Castillon, Board-certified in general medicine, in which she diagnosed back pain, knee pain and elbow pain. Dr. Castillon also submitted emergency response notes of the same date, stating that the purpose of the emergency response was a traumatic assault and that he had low back pain. The employing establishment issued appellant a properly completed Form CA-16 on the date of the incident, describing his injury as muscle and joint strain and disorientation due to a traumatic assault.<sup>2</sup>

In a letter dated November 22, 2011, John Minichelli, an immigration services officer, described the events resulting in appellant's injury. He stated that on November 17, 2011, he witnessed appellant restraining an unknown male in a cubicle near the entrance of a room at appellant's place of work. According to Mr. Minichelli, appellant exerted a great deal of energy in restraining the unknown male and called for someone to get security personnel, who came about five minutes later, by which time the unknown male had stopped resisting.

On November 28, 2011 OWCP requested additional medical evidence from appellant, on the grounds that the medical evidence submitted from Dr. Castillon had only provided a diagnosis of pain and pain is a symptom rather than a valid diagnosis. The development letter did not contain any mention of musculoskeletal or "musketal" strain.

In response, appellant submitted an attending physician's report (Form CA-20), dated November 29, 2011, from Dr. Sydney Mehl, a Board-certified physician of internal medicine and cardiovascular disease, in which Dr. Mehl diagnosed appellant with musculoskeletal strain and "low back [illegible]." Dr. Mehl checked the box indicating that appellant's condition was caused or aggravated by an employment activity, writing "intervened in fight" as an explanation, and noted that his diagnosis was based on an examination. Appellant also submitted bills from New York Downtown Hospital and Fire Department, City of New York for services rendered on November 17, 2011.

By decision dated January 5, 2012, OWCP denied appellant's claim, finding that the medical evidence was not sufficient to support his claim for compensation. Specifically, it noted that "the medical evidence received was insufficient to support your claim because you [sic] treating physician diagnosed you with 'musketal strain' and 'low back.' As stated in the

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<sup>2</sup> Federal (FECA) Procedure Manual, Part 5 -- Benefit Payments, *Principles of Bill Adjudication*, Chapter 5.204.2(a) (January 1996) provides that a completed Form CA-16 obligates OWCP to pay for any injury-related treatment performed by the physician or medical facility identified in Part A. In this case, the employing establishment issued appellant a Form CA-16 a properly completed Form CA-16 on the day of the incident.

development letter dated November 28, 2011 musketal strain and low back pain or [sic] not valid condition [sic] under FECA Program.” OWCP accepted that appellant was a federal civilian employee who filed a timely claim and that the events leading to injury occurred as described.

On December 20, 2012 appellant, through his representative, requested reconsideration of the January 5, 2012 decision of OWCP. With his request, he submitted a report dated April 18, 2012 from Dr. Charles P. Melone, Jr., a Board-certified orthopedic surgeon, in which Dr. Melone noted that appellant underwent surgery on March 13, 2012 for treatment of his right thumb carpometacarpal joint arthrosis. Dr. Melone did not opine as to whether appellant’s condition was work related and did not mention any work-related factors. Appellant also submitted a consultation note, dated February 6, 2012, allegedly from Dr. Melone, which was largely illegible and did not contain a legible signature. There was no legible text on this consultation note indicating that the author opined as to the cause of appellant’s injury.

Additionally, appellant submitted a Fire Department, City of New York prehospital care report dated November 17, 2012, in which an unnamed individual recounted that appellant had stated his injury to his lower back occurred when he was protecting a coworker from an assault from an applicant and was struck by a wooden cane.

By decision dated March 18, 2013, OWCP reviewed the merits of appellant’s claim, but did not modify its prior decision, on the grounds that the new medical evidence presented, Dr. Melone’s report, was not sufficient to establish the medical component of fact of injury. It stated that Dr. Melone’s report did not reference the cause of appellant’s conditions or how the need for surgery stemmed from the November 17, 2011 incident. OWCP also stated that the report did not address any assault or evidence that appellant’s physician was treating appellant for injuries relating to the November 17, 2011 work incident. Therefore, it affirmed its denial of appellant’s claim because it found that a medical condition had not been diagnosed as it related to the assault on him that occurred on November 17, 2011.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 timely filed within the applicable time limitation period of FECA, that an injury<sup>4</sup> was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> OWCP’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

<sup>5</sup> *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

Appellant alleges a traumatic injury arising out of an altercation or assault. 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. A fact of injury determination is based on two elements. 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>6</sup> An assault, to be compensable, must either arise in the course of employment, or if it does not, must be directed at the employee because of his employment.<sup>7</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>8</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>9</sup> The weight of the 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.<sup>10</sup>

### ANALYSIS

Appellant alleged that on November 17, 2011, he sustained injuries to his back, knee and arm as a result of a physical altercation in which an applicant attacked a coworker and he intervened to defend his colleague. OWCP accepted that the November 17, 2011 incident occurred in the performance of duty, as alleged, but found that the medical evidence was insufficient to establish that he sustained any injuries causally related to the accepted incident. The Board finds that appellant failed to meet his burden of proof to provide sufficient medical evidence to establish that he sustained injury as a result of the November 17, 2011 employment incident.

Appellant was initially treated by Dr. Castillon. In November 17, 2011 emergency discharge treatment notes, Dr. Castillon diagnosed back pain, knee pain and elbow pain, but did not opine as to the cause of appellant’s injuries or mention any employment factors consistent with such injuries. Pain is generally a description of a symptom and not considered a firm medical diagnosis.<sup>11</sup> The Board finds that Dr. Castillon failed to provide a firm medical

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<sup>6</sup>*Id. See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

<sup>7</sup>*Bruce Wright*, 43 ECAB 284, 296 (1991).

<sup>8</sup>*See J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

<sup>9</sup>*I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup>*James Mack*, 43 ECAB 321, 329 (1991).

<sup>11</sup>*B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

diagnosis on any condition. In addition, Dr. Castellon did not provide any opinion on the cause of appellant's injuries. The Board has held that 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>12</sup> Thus, the Board finds that Dr. Castellon's opinion is insufficient to establish appellant's claim.

Appellant next submitted an attending physician's report (Form CA-20) from Dr. Mehl dated November 29, 2011. In this report, Dr. Mehl diagnosed appellant with musculoskeletal strain and "low back [illegible]." He checked the box indicating that appellant's condition was caused or aggravated by an employment activity and noted that his diagnosis was based on an examination. Dr. Mehl provided a diagnosis other than pain that of musculoskeletal strain and opined on the issue of causal relationship. However, the Board has held that 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>13</sup> Dr. Mehl failed to address how the November 17, 2011 incident physiologically caused or contributed to appellant's diagnoses: he merely wrote "intervened in fight" next to the box indicating that appellant's condition was caused or aggravated by an employment activity. The Board finds that this opinion is of limited probative value on the issue of causal relationship because he does not explain how the November 17, 2011 employment incident caused appellant's injuries.<sup>14</sup>

In support of his request for reconsideration, appellant submitted a report dated April 18, 2012 from Dr. Melone in which he noted that appellant underwent surgery on March 13, 2012 for treatment of his right thumb carpometacarpal joint arthrosis. Dr. Melone did not opine as to whether appellant's condition was work related and did not mention any work-related factors. Appellant also submitted a consultation note, dated February 6, 2012, allegedly from Dr. Melone, which was largely illegible and did not contain a legible signature. There was no legible text on this consultation note indicating that the author opined as to the cause of appellant's injury. Furthermore, as noted, the Board has held that 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>15</sup> Dr. Melone did not offer an opinion regarding the cause of appellant's condition in his reports.

Appellant also submitted emergency response notes, bills from the Fire Department, City of New York and New York Downtown Hospital and a prehospital care report describing the employment incident, each dated November 17, 2011. The Board notes that this evidence does not meet the standard of rationalized medical evidence because neither the emergency response notes, bills nor the prehospital care report are the opinions of a physician, based on a complete

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<sup>12</sup>*C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149, 157 (2006).

<sup>13</sup>*S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-975 (issued February 6, 2009); *see also C.B.*, Docket No. 13-694 (issued May 29, 2013).

<sup>14</sup>*See J.R.*, Docket No. 12-1099 (issued November 7, 2012); *see also Douglas M. McQuaid*, 52 ECAB 382 (2001) (holding that medical reports must be based on a complete and accurate factual and medical background).

<sup>15</sup>*Supra* note 12.

factual and medical background of the employee, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>16</sup> Thus, this evidence was of no probative value on the issue of the medical component of fact of injury.

On appeal, counsel alleges that the medical evidence supported appellant's claim that his injuries were causally related to the November 17, 2011 employment incident. He stated that Dr. Melone's report clearly established the existence of medical conditions causally related to appellant's federal employment and that Dr. Melone's report clearly contained rationalized opinion demonstrating a causal relationship between the diagnosed conditions and the employment incident of November 17, 2011. As previously noted, Dr. Melone's report did not contain any opinion regarding the cause of an employee's condition. Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>17</sup> Appellant failed to provide sufficient rationalized medical evidence in this case. Thus, the Board finds that he did not meet his burden of proof to establish that he sustained injuries causally related to the November 17, 2011 employment incident.

The employing establishment issued a properly completed Form CA-16 to appellant on November 17, 2011, authorizing provision of office or hospital treatment as medically necessary for the effects of his injury. The Board notes that where, as in this case, an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.<sup>18</sup> The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP.<sup>19</sup> The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form. On return of the case record, OWCP should review whether appellant has been reimbursed for any incurred medical expenses.<sup>20</sup>

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 injuries to his back, knee and arm on November 17, 2011 in the performance of duty.

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<sup>16</sup>*Supra* note 9.

<sup>17</sup> *Supra* note 8.

<sup>18</sup> *See Tracy P. Spillane*, 54 ECAB 608, 610 n.9 (2003); *Elaine M. Kreymborg*, 41 ECAB 256, 259 (1989).

<sup>19</sup> *See* 20 C.F.R. § 10.300(c).

<sup>20</sup> *See M.M.*, Docket No. 11-1544 (issued March 12, 2012); *A.A.*, Docket No. 11-787 (issued November 2, 2011).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 18, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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