

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

C.W., Appellant

and

DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Pine Knot, KY, Employer

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**Docket No. 14-1114
Issued: August 25, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 14, 2014 appellant filed a timely appeal from a February 18, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 sustained an injury to his lower back in the performance of duty on January 2, 2014.

FACTUAL HISTORY

Appellant, a 24-year-old correctional officer, filed a claim for benefits on January 9, 2013, alleging that he injured his lower back while responding to a call for assistance on January 2, 2014.

¹ 5 U.S.C. § 8101 *et seq.*

By letter dated January 15, 2014, OWCP informed appellant 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 his federal employment. OWCP requested that appellant submit the additional evidence within 30 days.

In a January 2, 2014 report, Dr. Sonali P. Deo, a specialist in family medicine, stated that appellant had experienced an onset of lower back pain while at work one day prior which was persistent and worsening. She advised that the pain was sharp and throbbing and had radiated to the left foot. Dr. Deo asserted that appellant's lumbar symptoms were aggravated by daily activities.

The employing establishment issued a Form CA-16 to the Oliver Springs Family Practice on January 2, 2014.²

Appellant submitted a January 2, 2014 Form CA-20 duty status report from Dr. Deo which indicated that she had examined appellant for a lower back injury on January 2, 2014. Dr. Deo stated on the report that appellant had injured his back that morning while responding to an alarm at work; the pain radiated down his left leg. She checked a box indicating that the condition found was caused or aggravated by the employment activity appellant described.

In a January 8, 2014 report, Dr. Deo stated that appellant had been experiencing throbbing, musculoskeletal pain for four days with a severity level of 7. She advised that the pain radiated down his left leg to the left foot and was aggravated by movement. Dr. Deo opined that he had associated symptoms including decreased mobility, difficulty initiating sleep, joint instability and tenderness and limping.

In a report dated January 21, 2014, Dr. Deo advised that appellant continued to experience shooting, throbbing pain in his lower back which was persistent and worsening. She reiterated that his symptoms were aggravated by daily activities.

In a January 31, 2014 report, Dr. Deo noted initially treating appellant for lower back pain radiating to his left foot on January 2, 2014 after responding to a call. She advised that x-ray testing was normal and a magnetic resonance imaging (MRI) scan showed a left paracentral disc protrusion at L5-S1, which produced posterior displacement and mass effect on the left S1 nerve root. Dr. Deo asserted that appellant had symptoms associated with these findings, including the pain shooting down his left leg and weakness associated with his left leg; he also had complaints of right leg numbness during his last visit on January 21, 2014.

Dr. Deo advised that, given the MRI scan findings, appellant needed to see a specialist. She recommended that he consult a neurosurgeon for further testing and evaluation due to his symptomatic lumbosacral disc irritation, which had persisted for more than four weeks.

² A properly completed Form CA-16 can create a contractual agreement for payment of medical treatment even if the claim is not ultimately accepted. OWCP has not made a finding as to whether this form properly authorized treatment. *See Tracy P. Spillane*, 54 ECAB 608 (2003); 20 C.F.R. § 10.300.

By decision dated February 18, 2014, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim that he injured his lower back in the performance of duty on January 2, 2014.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵

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.⁶ 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.⁷ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁸

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.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

³ 5 U.S.C. §§ 8101-8193.

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

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

ANALYSIS

OWCP accepted that appellant experienced lower back pain while responding to a call for assistance on January 2, 2014. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.¹⁰ Appellant has not submitted sufficient rationalized, probative medical evidence to establish that the January 2, 2014 employment incident would have been competent to cause the claimed injury.

Dr. Deo submitted several reports in which she noted appellant's complaints of lower back pain on examination and indicated that he had left paracentral disc protrusion at L5-S1 based on MRI scan results. These reports, however, did not sufficiently relate the diagnoses to the January 2, 2014 incident at work. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of 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.¹¹

Dr. Deo advised in her January 2, 2013 report that appellant had an onset of lower back pain while at work which had become persistent and was worsening; the pain was sharp and throbbing and radiated to the left foot. She advised that his symptoms were aggravated by daily activities. In her January 8, 2014 report, Dr. Deo stated that appellant had continued to experience throbbing, musculoskeletal pain, radiating to his left foot, with a severity level of 7. She asserted that the pain was aggravated by movement and that he had associated symptoms such as decreased mobility, difficulty initiating sleep, joint instability and tenderness and limping. Dr. Deo essentially reiterated these findings and conclusions in her January 21, 2014 report. She stated in her January 31, 2014 report that appellant's lower back pain started when he responded to a call at work on January 2, 2014 and started to run.

Dr. Deo advised that appellant had normal x-ray results but that an MRI scan showed a left paracentral disc protrusion at L5-S1 and posterior displacement and mass effect on the left S1 nerve root. She opined that he had symptoms stemming from these findings which included pain and weakness radiating down his left leg and right leg numbness during his most recent visit on January 21, 2014. Dr. Deo recommended that appellant see a neurosurgeon for further testing and evaluation.

Although Dr. Deo presented a diagnosis of appellant's condition and stated that results of an MRI scan demonstrated that he had a left paracentral disc protrusion at L5-S1, she did not adequately address how this condition and these findings were causally related to the January 2, 2014 work incident. The medical reports of record did not explain how medically appellant would have sustained a lower back injury while running in response to a call for assistance on January 2, 2014. The Board notes that in her initial report of January 2, 2014, Dr. Deo related that his onset of pain occurred a day ago, not on January 2, 2014. She has not explained why appellant experienced onset of pain on January 1, 2014, if the diagnosed herniated disc occurred while running on January 2, 2014. The Board has held that the mere fact that a condition

¹⁰ *Carlone, supra* note 5.

¹¹ *See Anna C. Leanza*, 48 ECAB 115 (1996).

manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.¹²

There is insufficient rationalized evidence in the record that appellant's lower back condition was work related. Furthermore, the January 2, 2014 form report from Dr. Deo which supports causal relationship with a check mark is insufficient to establish the claim, as the Board has held that, without further explanation or rationale, a checked box is not sufficient to establish causation.¹³ Therefore, appellant failed to provide a medical report from a physician that explains how the work incident of January 2, 2014 caused or contributed to the claimed lower back injury.

OWCP advised appellant of the evidence required to establish his claim; however, he failed to submit such evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the January 2, 2014 work accident would have caused the claimed injury. Accordingly, he did not establish that he sustained a lower back injury 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 he sustained a lower back injury in the performance of duty on January 2, 2014.

¹² See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹³ *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

ORDER

IT IS HEREBY ORDERED THAT the February 18, 2014 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 25, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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