

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

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C.A., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Lovington, NM, Employer )

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**Docket No. 14-1123  
Issued: August 21, 2014**

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 14, 2014 appellant, through his attorney, filed a timely appeal from a February 25, 2014 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.

**ISSUE**

The issue is whether appellant sustained an injury to his lower back in the performance of duty on January 11, 2013.

**FACTUAL HISTORY**

Appellant, a 26-year-old mail carrier, filed a claim for benefits on January 25, 2013, alleging that he sustained pain in his left leg and lower back while stepping out of a mail vehicle on January 11, 2013.

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

By letter dated February 4, 2013, 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 supplemental statement dated February 7, 2013, appellant explained that the seat of his mail vehicle was worn out and he had to exert extra effort to swing his legs out of the vehicle. When he stepped down with his left leg, he felt sharp pain in his left leg and back.

By January 14, 2013 report, received by OWCP on March 14, 2013, Dr. Amar Bains, a specialist in family medicine, advised that appellant pulled a muscle at work the previous Friday. Appellant asserted that he stepped out of his truck, set his foot on the ground the wrong way and felt a sudden, sharp pain in his left lower lumbar region, radiating down his left leg. Dr. Bains indicated that appellant described the symptoms of dysesthesia and radiculitis; he also advised that his low back pain caused him difficulty weight-bearing and walking. He diagnosed sciatica and radiculitis. Dr. Bains performed an x-ray examination and recommended that appellant undergo a magnetic resonance imaging (MRI) scan.

In a February 7, 2013 report, received by OWCP on March 14, 2013, Dr. Bains stated that appellant underwent a February 4, 2013 lumbar MRI scan which showed a large, left paracentral L5-S1 disc herniation, compressing the left S1 nerve root and causing a slight indentation on the thecal sac. The MRI scan also showed a plus facet arthrosis, resulting in minimal foraminal encroachment, with a small left paracentral L4-5 disc herniation which slightly impresses the thecal sac. Dr. Bains advised that this was a work-related injury and diagnosed sciatica, radiculitis and multiple disc herniations.

On March 14, 2013 the employing establishment controverted appellant's claim, noting that appellant had given contradictory descriptions of the injury.

By decision dated April 12, 2013, OWCP denied appellant's claim, finding that he failed to submit sufficient medical evidence in support of his claim that he sustained left leg and lower back injuries causally related to the January 11, 2013 incident.

By letter dated July 17, 2013, appellant requested reconsideration of the April 12, 2013 decision.

In a July 10, 2013 report, received by OWCP on August 12, 2013, Dr. Jeffrey Nees, a specialist in neurosurgery, stated that he had been treating appellant for low back pain since June 3, 2013. He asserted that appellant was injured at work in January 2013; the injury occurred when he stepped out of his mail truck, planted his foot and experienced pain in the left side of his back, radiating down his left leg. Dr. Nees performed a left L5-S1 discectomy on May 31, 2013 after attempting conservative management of appellant's low back condition. He opined, with reasonable medical certainty, that the injury to appellant's back was directly related to his work and happened on the job; the care rendered for this injury, culminating in surgery, was a direct result of this work-related injury. In a September 6, 2013 addendum to the July 10,

2013 report, Dr. Nees again noted appellant's history of injury as "stepping down out of his mail truck when his foot planted, he experienced back pain." He diagnosed displacement of lumbar intervertebral disc without myelopathy, spinal stenosis in the cervical region and displacement of cervical intervertebral disc without myelopathy. Dr. Nees stated:

"In my medical opinion, the facts of injury are the direct and proximate cause of the diagnosis cited above. This is based on reasonable medical probability. There may be other causes for this medical problem, but one of the causes is clearly the activities of work described (by) the patient and described above."

Appellant also resubmitted diagnostic tests of record.

By decision dated December 4, 2013, OWCP denied modification of the April 12, 2013 decision.

By letter dated January 28, 2014, appellant's attorney requested reconsideration of the April 12, 2013 decision. Appellant resubmitted Dr. Bains' January 14, 2013 report, with diagnostic test results.

By decision dated February 25, 2014, OWCP denied modification of the April 12, 2013 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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>3</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>4</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>5</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. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical

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<sup>2</sup> 5 U.S.C. § 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

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.<sup>6</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>7</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>8</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### ANALYSIS

OWCP accepted that appellant experienced left leg and back pain while exiting a mail vehicle on January 11, 2013. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.<sup>9</sup> Appellant has not submitted rationalized, probative medical evidence to establish that the January 11, 2013 employment incident would have been competent to cause the claimed injury.

In support of his claim, appellant submitted reports from Drs. Bains and Nees. These reports related findings of low back pain radiating down the left leg on examination and provided diagnoses of appellant's low back condition, including herniated L5-S1 disc; they did not, however, sufficiently relate the diagnoses to the January 11, 2013 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.<sup>10</sup>

Dr. Bains stated in his January 14, 2013 report that appellant had pulled a muscle on January 11, 2013 when he stepped out of his truck, set his foot on the ground the wrong way and felt a sudden, sharp pain in his left lower lumbar region, radiating down his left leg. He diagnosed sciatica and radiculitis, administered x-ray tests and scheduled appellant for an MRI

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<sup>6</sup> *Id.*

<sup>7</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>8</sup> *Id.*

<sup>9</sup> *Carlone*, *supra* note 5.

<sup>10</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

scan. In his February 7, 2013 report, Dr. Bains advised that the February 4, 2013 lumbar MRI scan demonstrated a large, left paracentral L5-S1 disc herniation, compressing the left S1 nerve root and causing a slight indentation on the thecal sac; it also showed plus facet arthrosis, resulting in minimal foraminal encroachment, with a small left paracentral L4-5 disc herniation which slightly impressed the thecal sac. He advised that this was a work-related injury and diagnosed sciatica, radiculitis and multiple disc herniations. Dr. Bains' reports were however based upon an incorrect history of injury. In his initial claim form and in his February 7, 2013 supplemental statement, appellant stated that he experienced sharp pain when he placed his left foot on the ground while stepping out of his truck. He did not allege that he set his foot down on the ground the wrong way resulting in pain, as reported by Dr. Bains. Dr. Bains' reports were therefore of limited probative value as they contained incorrect histories of injury and did not explain how the simple act of planting a foot on the ground would cause the diagnosed conditions, including herniated disc.

Dr. Nees did provide the correct history of injury and advised that he performed a left L5-S1 discectomy after attempting to treat appellant's low back condition conservatively. He asserted that appellant's low back injury was directly related to his work and happened on the job. Dr. Nees opined that the care he provided for the injury, culminating in surgery, was a direct result of this work-related injury. In his September 6, 2013 report, he diagnosed displacement of lumbar intervertebral disc without myelopathy, spinal stenosis in the cervical region and displacement of cervical intervertebral disc without myelopathy. Dr. Nees concluded that, while there might be other causes for appellant's problem, one of the causes was clearly the incident of January 11, 2013. This opinion, however, was not supported by medical rationale. Dr. Nees did not explain how medically appellant would have sustained a severe lower back injury while planting his left foot on the ground while exiting a mail vehicle on January 11, 2013. Without medical rationale explaining how the incident could have caused the diagnosed condition, the medical opinion is of little probative value.

There is insufficient rationalized evidence in the record that appellant's lower back injury was work related. Appellant failed to provide a medical report from a physician that explains how the work incident of January 11, 2013, stepping out of the mail vehicle, physiologically caused the claimed low back injury.

OWCP advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Accordingly, appellant did not establish that he sustained a low back injury in the performance of duty. OWCP properly denied his 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 low back injury in the performance of duty on January 11, 2013.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 25, 2014 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 21, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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