

lift.² He stopped work on October 16, 2012. The employing establishment controverted the claim, contending that appellant had a prior unreported injury to his back, but did not know when the injury occurred.³

By letter dated November 6, 2012, OWCP requested that appellant submit additional factual and medical information, including a detailed report from his attending physician addressing the causal relationship between any diagnosed condition and the October 16, 2012 work incident. No response was received.

In a decision dated December 7, 2012, OWCP denied appellant's claim. It found that he did not establish that the October 16, 2012 work incident occurred as alleged.

In a report dated October 22, 2012, Dr. Robert Greenblum, a Board-certified orthopedic surgeon, found tenderness of the right paravertebral muscles especially at S1 on the right and reduced spinal motion with intact motor strength and sensation. He diagnosed lumbar strain and right sacroiliitis. Dr. Greenblum recommended physical therapy. In a disability certificate dated October 22, 2012, he diagnosed acute lumbar strain and found that appellant should not work.

In a report dated November 13, 2012, Dr. Greenblum discussed appellant's complaints of continued low back pain radiated into his lower right extremity. He diagnosed persistent lumbar strain and sacroiliitis and radiculitis on the right side. In a disability certificate dated November 13, 2012, Dr. Greenblum found that appellant could not work.

A November 15, 2012 magnetic resonance imaging (MRI) scan study showed a disc bulge at L4-5 "with [a] concomitant right foraminal herniated disc compressing the right L4 nerve," disc space narrowing and desiccation and a disc bulge at L5-S1 with endplate hypertrophic changes.

In a disability certificate dated November 27, 2012, Dr. Greenblum diagnosed acute lumbar strain, lumbar radiculitis and a herniated disc. He found that appellant was disabled from employment. In a narrative report dated November 27, 2012, Dr. Greenblum evaluated appellant for continued complaints of low back discomfort with right leg pain. He noted that the November 15, 2012 MRI scan study revealed a right foraminal L4-5 herniated disc with right L4 nerve root compression. Dr. Greenblum diagnosed an L4-5 herniated disc with compression on the right at L4, lumbar strain, right sacroiliitis and right lumbar radiculitis.

On December 17, 2012 appellant, through his attorney, requested a telephone hearing before an OWCP hearing representative. At the March 12, 2013 hearing, appellant described the October 16, 2012 work incident. He related that he did not initially inform Dr. Greenblum that he had sustained an injury on the job because he believed that he needed medical approval. Appellant sought medical treatment on October 16, 2012 from an urgent care facility. He noted having received prior treatment for a back condition. The hearing representative advised

² Appellant referred to the hampers as "pumpkins."

³ The employing establishment submitted statements regarding the October 16, 2012 incident.

appellant that he should submit a medical report discussing any prior back condition and the October 16, 2012 work incident.

By decision dated May 30, 2013, the hearing representative affirmed the December 7, 2012 decision, as modified. She found that appellant established that the October 16, 2012 work incident occurred as alleged. The hearing representative determined, however, that he had not submitted sufficient medical evidence to establish his back condition was causally related to the employment incident.

In a report dated June 26, 2013, Dr. Mark J. Ruoff, a Board-certified orthopedic surgeon, related that in his February 27 and June 12, 2013 reports he obtained a history of appellant sustaining an injury in October 2012 “sliding a mailbag into the back of a truck.” He specified that the correct “mechanism of injury that occurred on October 16, 2012 was that he was moving heavy hampers of mail between the mail truck and the loading dock. In fact, he was moving hampers of mail onto a truck lift and then onto the truck.”

On August 7, 2013 appellant, through his attorney, requested reconsideration.

In a decision dated October 8, 2013, OWCP denied appellant’s request for reconsideration. It found that he did not submit evidence or raise an argument sufficient to warrant reopening the case for further review of the merits under 5 U.S.C. § 8128. It determined that Dr. Ruoff’s June 26, 2013 report did not provide an opinion on causal relationship and thus did not address the relevant issue.

On March 6, 2014 appellant, through his attorney, again requested reconsideration. He submitted a June 12, 2013 report from Dr. Ruoff, who related that he had treated appellant since February 27, 2013 for an injury at work in October 2012 that occurred when he experienced significant pain sliding a mailbag into his truck. Dr. Ruoff noted that an MRI scan study showed a disc herniation at L4-5. He advised that appellant was disabled following his injury. Dr. Ruoff stated, “It is my opinion, based on his history provided and current symptomatology, that his current condition is related to the injury of October 2012.”

By decision dated June 2, 2014, OWCP denied modification of its May 30, 2013 decision.

On appeal appellant’s attorney contends that the medical reports from Dr. Ruoff and from Dr. Greenblum are sufficient to meet his burden of proof.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 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

⁴ 5 U.S.C. § 8101 *et seq.*

employment injury.⁵ 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.⁶

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁸ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁹

ANALYSIS

Appellant alleged that he injured his lower back pushing two hampers onto a lift. OWCP accepted that the October 16, 2012 incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that he sustained a low back injury as a result of this incident.

The Board finds that appellant has not established that the October 16, 2012 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.¹⁰

On October 22, 2012 Dr. Greenblum found tenderness of the right paravertebral muscles and loss of spinal motion. He diagnosed lumbar strain and right sacroiliitis. On November 13, 2012 Dr. Greenblum diagnosed persistent lumbar strain and right-sided sacroiliitis and radiculitis. In a report dated November 27, 2012, he noted that an MRI scan study showed a right foraminal herniated disc at L4-5 with nerve root compression on the right at L4. In disability certificates dated October 22 to November 27, 2012, Dr. Greenblum found that appellant was disabled from employment. The Board finds, however, that Dr. Greenblum did not address causation. 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.¹¹

⁵ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁶ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁷ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁸ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁹ *Id.*

¹⁰ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹¹ *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006).

In the report dated June 12, 2013, Dr. Ruoff stated that he initially evaluated appellant on February 27, 2013 for back pain that began after he slid a mailbag onto his truck in October 2012. He diagnosed a herniated disc at L4-5 as demonstrated by MRI scan study. Dr. Ruoff opined that appellant's current condition arose from the October 2012 work incident based on his history and symptoms. On June 26, 2013 he clarified the history of injury as appellant injuring his back on October 16, 2012 moving mail hampers between a mail truck and the loading dock. Dr. Ruoff, however, did not adequately explain his conclusion that the herniated disc arose from the October 16, 2012 employment incident other than to generally note that it was consistent with the history and symptoms. A physician must provide an opinion on whether the employment incident described caused or contributed to the claimant's diagnosed medical condition and support that opinion with medical reasoning to demonstrate that the conclusion reached is sound, logical and rationale.¹² Further, Dr. Ruoff did not discuss appellant's history of prior back condition. Medical conclusions based on an incomplete factual history are of diminished probative value.¹³

On appeal counsel argues that the medical reports of Drs. Greenblum and Ruoff are sufficient to meet appellant's burden to establish an employment injury on October 16, 2012. As discussed, however, Dr. Greenblum did not address causation and Dr. Ruoff did not provide sufficient rationale for his conclusion; consequently, their reports are of diminished probative value. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is a causal relationship between his claimed condition and his employment.¹⁴

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on October 16, 2012 in the performance of duty.

¹² *John W. Montoya*, 54 ECAB 306 (2003).

¹³ *See M.W.*, 57 ECAB 710 (2006).

¹⁴ *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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