



## **FACTUAL HISTORY**

On January 28, 2013 appellant, a 57-year-old pipefitter helper (boiler plant helper), filed a traumatic injury claim alleging that he suffered right testicular pain that day while removing bolts on a heat exchanger. He stated that his testicle would probably have to be removed.

On February 8, 2013 OWCP asked appellant to submit additional evidence to establish his claim, including a physician's opinion, supported by a medical explanation, as to how the reported work incident caused or aggravated his medical condition. It held his case open for 30 days to afford him the opportunity to submit the requested information.

In a decision dated March 21, 2013, OWCP denied appellant's injury claim. It had received no further evidence from him. OWCP found the evidence was insufficient to establish that the incident occurred as alleged.

Appellant requested reconsideration on April 3, 2013. OWCP received his request on April 9, 2013.

In an April 9, 2013 statement, a coworker explained that on January 28, 2013 he saw appellant using large wrenches to remove some large nuts off the head of a heat exchanger:

“After approximately an hour of removing the nuts I noticed [appellant] wincing in pain. [Appellant] [stated] he was going to have [to] get some more tools to help in the process. As he was walking away I noticed it was hard for him to walk. When [appellant] returned with extra tools I noticed he was in more pain. As we were getting ready to leave for lunch he couldn't get into the truck. [Another worker] and I had to help [appellant] walk to the truck and help him get in.”

Two other coworkers provided similar statements.

On January 28, 2013 the employing establishment health unit noted the following history of present illness: “Removing frozen bolts at work and felt pain in low back on left, increasing pain right groin and right testicle, has been increasing since 0900, now unable to sit down and very painful to move.” Dr. John W. Woltz, an osteopath specializing in family medicine, indicated that he was unable to rule out hernia and that testicular torsion was also a possibility. He sent appellant to a local emergency department for a complete evaluation.

At the emergency department, an ultrasound report indicated a small well-circumscribed ovoid anechoic space on the right measuring eight millimeters and no evidence of torsion. A specialist in emergency medicine prescribed medications and advised appellant to follow up with his primary care physician within two days.

With a diagnosis of chronic right testis pain, appellant underwent a right orchiectomy with implant on February 11, 2013. A pathology report found a relatively small parenchymal benign cyst with no atypia or active inflammation.

On April 4, 2013 Dr. Stephen L. Dona, an osteopath specializing in urological surgery, completed an attending physician's form report. He diagnosed orchalgia and indicated that this condition was preexisting to 1994. Asked whether this condition was caused or aggravated by employment activity, Dr. Dona responded: "? Maybe could have been aggravated."

In a decision dated July 15, 2013, OWCP advised appellant that it had declined his request for reconsideration and had not reviewed the merits of his case. Nonetheless, it found that the evidence was now sufficient to support that on January 28, 2013 he was using large wrenches to remove a difficult bolt. OWCP further found that the medical evidence was insufficient to establish a medical diagnosis causally connected to this work incident.

On appeal, appellant notes that, although Dr. Dona stated that he was not there to see what happened, there were witnesses who had submitted statements as to what occurred. Appellant asks only for a fair decision.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.<sup>4</sup>

Causal relationship is a medical issue,<sup>5</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>6</sup> must be one of reasonable medical certainty,<sup>7</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>8</sup>

### **ANALYSIS**

At the outset, the Board notes that although OWCP advised in its July 15, 2013 decision that it did not review the merits of appellant's case, OWCP reviewed the merits and made

---

<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>6</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>7</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>8</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

findings. It weighed the evidence and found that it was now sufficient to establish that the incident occurred as alleged but was insufficient to establish the element of causal relationship. For this reason, the Board finds that OWCP's July 15, 2013 decision is a decision on the merits of appellant's case.<sup>9</sup>

There is no dispute as to appellant's activities on January 28, 2013. With the submission of statements from his coworkers, OWCP accepts that he used large wrenches to try to remove frozen bolts. Appellant has therefore established that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged.

The question that remains is whether appellant's work activity on the morning of January 28, 2013 caused an injury. This is a medical question that must be addressed by a physician's well-reasoned opinion explaining how the accepted work activity caused appellant's diagnosed condition.

None of the medical evidence provides an affirmative opinion on causal relationship. Dr. Woltz, the health unit osteopath, offered no firm diagnosis of appellant's condition. He was unable to rule out hernia, but that was not something he diagnosed. Indeed, none of the medical evidence in this case supports that appellant suffered a hernia. Dr. Woltz also found that testicular torsion was a possibility, but an ultrasound report from the emergency department that day demonstrated no evidence of torsion.

The February 11, 2013 operative report also offered no firm diagnosis of appellant's condition. It simply indicated that he suffered from chronic right testis pain. The report did not identify what caused this symptom. A pathology report found a relatively small parenchymal benign cyst, but there was no indication that this was the source of appellant's chronic pain.

Appellant's surgeon, Dr. Dona, completed a form report. As a rule, when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.<sup>10</sup> Dr. Dona did not check "yes" when asked if appellant's condition was caused or aggravated by employment activity. He responded with a question mark and stated that it "maybe could have been aggravated." Such speculation carries little weight and is not sufficient to discharge appellant's burden of proof.<sup>11</sup> Further, Dr. Dona did not demonstrate his understanding of what happened on January 28, 2008. Medical conclusions based on inaccurate or incomplete histories are also of little probative value.<sup>12</sup>

---

<sup>9</sup> *E.g.*, A.C., Docket No. 07-2423 (issued May 15, 2008).

<sup>10</sup> *E.g.*, *Lillian M. Jones*, 34 ECAB 379 (1982).

<sup>11</sup> *See Jennifer Beville*, 33 ECAB 1970 (1982) (finding that a physician's opinion that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

<sup>12</sup> *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

Because appellant has failed to submit a physician's well-reasoned opinion on the critical element of causal relationship, one based on a complete and accurate factual history, the Board finds that he has not met his burden of proof to establish that his work activity on the morning of January 28, 2013 caused an injury.

The record indicates that appellant had been suffering from testicular pain since 1994. It indicates that he was suffering from this pain on the morning of January 28, 2013.<sup>13</sup> The mere fact that a condition manifests itself or worsens during a period of federal employment, however, raises no inference of causal relationship between the two.<sup>14</sup> What medical condition was causing appellant's pain, and whether work activity on the morning of January 28, 2013 caused any aggravation of that medical condition, remains unknown.

Appellant indicates that his doctor would not give an opinion because he was not an eyewitness. It is established as a matter of fact, however, that appellant was using large wrenches to try to remove some large bolts on a heat exchanger. Appellant's doctor may rely on this history for any opinion he may give on the issue of causal relationship.

On the issue of fairness, appellant has filed a claim for compensation benefits; therefore, he has the burden of proof to establish his entitlement to such benefits. This includes submitting a rationalized medical opinion establishing a causal connection between his work activity on the morning of January 28, 2013 and a firmly diagnosed medical condition. As appellant has not yet done so, the Board must affirm the denial of his claim.

Appellant may submit new evidence or argument, however, 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 not met his burden to establish that his work activity on January 28, 2013 caused an injury.

---

<sup>13</sup> The chronic nature of appellant's condition is evidenced by the fact that, when he filed his claim for compensation benefits that day, he already understood that his right testis would probably have to be removed.

<sup>14</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 15, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board