

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

D.S., Appellant)

and)

DEPARTMENT OF THE NAVY, NAVAL)
COMPUTER & TELECOMMUNICATIONS)
AREA MASTER STATION, PACIFIC,)
Wahiawa, HI, Employer)

**Docket No. 13-1861
Issued: January 13, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 5, 2013 appellant filed a timely appeal from the June 12, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his traumatic injury claim. 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 established that the work incident on April 13, 2012 caused a low back injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 16, 2012 appellant, a 54-year-old custodial worker, filed a traumatic injury claim alleging that he injured his low back on April 13, 2012 while operating an electric pallet jack to make a turn.

OWCP received physical therapy notes and medical requests for authorization. Dr. Clive I. Otsuka, an internist,² advised on March 17, 2012 that appellant had a history of lower back pain; therefore, he recommended that appellant be evaluated by a physiatrist to determine his lifting capabilities. An imaging study of the lumbar spine on April 17, 2012 showed mild multilevel disc degeneration, slightly progressed at L3-4. Dr. Otsuka released appellant to light duty.

OWCP informed appellant that it had received no diagnosis of any medical condition resulting from the April 13, 2012 work incident, nor any physician's opinion as to how the incident caused any diagnosed condition. It emphasized that the medical evidence on causal relationship was critical to his claim. OWCP extended him 30 days to submit the information requested.

In an October 24, 2012 decision, OWCP denied appellant's claim. It accepted that the April 13, 2012 work incident occurred as alleged, but found that the medical evidence of record was insufficient to establish causal relation.

On December 8, 2012 Dr. Otsuka advised: "This is to confirm that I have been treating [appellant] for his back, shoulder and leg pain, which he sustained from work injuries on the dates shown above."³ He provided his medical records. On April 17, 2012 Dr. Otsuka related what happened at work on April 13, 2012. He described appellant's complaints and his findings on examination. Dr. Otsuka diagnosed lower back pain. "The patient probably has a muscle strain and spasms." On August 18, 2012 he diagnosed sprain of unspecified site of back. "The patient still has lower back pains that [are] probably due to muscle strain and spasm." On September 22, 2012 Dr. Otsuka diagnosed lumbago. "The patient still has lower back pains." On October 29, 2012 he advised that appellant did not feel that he could return to work.

In a decision dated June 12, 2013, an OWCP hearing representative affirmed the October 24, 2012 decision. He found that the record contained no medical opinion establishing the relationship between the work duties performed on April 13, 2012 and any low back condition.

On appeal, appellant contends that he sustained a back injury that hinders his ability to do motor vehicle warehousing work with the Federal Government. He referenced his physician's numerous attempts to transfer his care to a physiatrist.

² The Board is unable to determine whether Dr. Otsuka is Board-certified.

³ Dates of injury were listed as April 13 and August 23, 2012.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁴ 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.⁵

Causal relationship is a medical issue,⁶ 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,⁷ must be one of reasonable medical certainty,⁸ 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.⁹

ANALYSIS

OWCP accepts that the April 13, 2012 work incident occurred as alleged. Appellant has therefore met his burden to establish 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 this incident caused an injury.

The element of causal relationship is a medical issue, one that requires the physician to discuss the work incident and explain how it caused a firmly diagnosed medical condition. The soundness of this explanation is critical. The term “probably” is less speculative and should be viewed in the context of the rest of the medical report and the factual evidence, since sometimes this could mean that the physician is expressing an opinion based on reasonable medical certainty, as opposed to absolute medical certainty. If the physician’s meaning is in question, he should be asked to explain the basis for any doubt and to state with reasonable certainty whether the disability is related to employment.¹⁰

⁴ 5 U.S.C. § 8102(a).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ *See William E. Enright*, 31 ECAB 426, 430 (1980).

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.6.a(5) (September 2010).

Dr. Otsuka, the attending internist, commented that appellant “probably” had a muscle strain and spasms. He later stated that appellant’s lower back pain was “probably” due to muscle strain and spasm. It is unclear whether Dr. Otsuka was expressing doubt about appellant’s diagnosis or doubt about the etiology of appellant’s lower back pain or both. He did not state to a reasonable degree of medical certainty whether the April 13, 2012 work incident caused appellant’s back condition.

Medical conclusions unsupported by rationale are of diminished probative value.¹¹ Dr. Otsuka did not adequately explain how the April 13, 2012 incident caused a firmly diagnosed medical condition or cite to the findings supporting his conclusion. He did not directly address the issue of causal relationship. This is necessary given appellant’s history of preexisting lower back pain, as well as the clinical findings of mild multilevel disc degeneration, slightly progressed at L3-4 and the change in diagnosis to lumbago. Dr. Otsuka did not submit a narrative report discussing what happened on April 13, 2012 or how the accepted incident caused or contributed to appellant’s medical condition.

The Board finds that the medical opinion evidence is insufficient to establish the critical element of causal relationship. Accordingly, the Board finds that appellant has not met his burden of proof. The Board will affirm OWCP’s June 12, 2013 decision.

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.

Appellant states on appeal that his back injury is work related; but this must be established by a well-reasoned medical opinion. OWCP will not pay or reimburse any expense associated with his medical treatment or evaluation, including a transfer of care, because appellant has not yet established that he is entitled to benefits under FECA. It has not accepted his claim that he sustained a work injury on April 13, 2013. Should appellant establish the critical element of causal relationship, OWCP may consider authorizing medical treatment.¹²

CONCLUSION

The Board finds that appellant has not met his burden to establish that the work incident on April 13, 2013 caused a specific low back injury.

¹¹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

¹² 5 U.S.C. § 8103(a).

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 13, 2014
Washington, DC

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

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

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