

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

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**B.I., Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
TRANSPORTATION SECURITY  
ADMINISTRATION, Morrisville, NC, Employer**

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**Docket No. 14-578  
Issued: July 1, 2014**

*Appearances:*  
*Daniel F. Read, 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  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On January 15, 2014 appellant, through his attorney, filed a timely appeal from an October 4, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. 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 met his burden of proof to establish that his back condition is causally related to a December 17, 2011 employment incident, as alleged.

On appeal, counsel contends that appellant was actually claiming an occupational disease as a result of repetitive lifting and moving of bags since his original injury in 2009. He argued

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

that the aggravation and/or acceleration of appellant's degenerative disc disease was the result of repetitive work and the medical evidence submitted was sufficient to establish the claim.

### **FACTUAL HISTORY**

On December 19, 2011 appellant, then a 30-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that he injured his low back as a result of lifting a bag in the performance of duty on December 17, 2011. He stated that upon placing the bag on a table, he felt a slight popping sensation in his back.

In a December 21, 2011 report, Dr. Frederick Benedict, a Board-certified orthopedic surgeon, noted that appellant was unable to walk as "a result of his original work-related injury" and estimated that he would be able to return to work effective January 12, 2012. On January 4, 2012 he diagnosed lower back pain and took appellant off work from January 11 to February 2, 2012. On January 13, 2012 Dr. Benedict advised that appellant had a "recurrence of his previous work-related injury." He stated that appellant injured his back at work in 2009 and "was covered and treated as a [w]orkmen's [c]ompensation injury." Appellant missed several weeks of work during the next several years. Dr. Benedict stated that appellant was working with physical restrictions and recently reinjured his back. Appellant had a previous magnetic resonance imaging (MRI) scan which documented an early degenerative and bulging disc, which Dr. Benedict opined was "clearly a recurrence of his previous covered back injury."

Appellant filed claims for wage-loss compensation for intermittent periods commencing February 2, 2012.

In a February 21, 2012 letter, OWCP indicated that when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work. Based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. OWCP reopened the claim for consideration because a claim for wage-loss compensation had been received. It requested additional evidence and afforded appellant 30 days to respond to its inquiries.

Appellant submitted reports dated December 21, 2011 through February 28, 2012 from Dr. Benedict, who diagnosed lumbar/lumbosacral disc degeneration and lumbar disc disorder with myelopathy. Dr. Benedict reiterated that appellant's back condition occurred following an employment injury in 2009 while moving a duffle bag to an outgoing conveyor belt. Appellant felt a pop in the lower left quadrant of his back immediately followed by a sharp pain with radiation down the left leg. On February 28, 2012 Dr. Benedict diagnosed ruptured lumbar disc and took appellant off work from February 22 to April 22, 2012.

By decision dated March 26, 2012, OWCP denied the claim on the basis that the medical evidence submitted was not sufficient to establish a causal relationship between appellant's back condition and the December 17, 2011 employment incident.

On April 25, 2012 appellant, through his attorney, requested an oral hearing before an OWCP hearing representative. Counsel submitted an April 25, 2012 letter indicating that

appellant completed a notice of recurrence (Form CA-2a) immediately following the December 17, 2011 incident to report the injury as a worsening or recurrence of his condition. Appellant knew based on the pain and sensations he felt at the time he experienced the pop in his back, that it was related to his previous injury from November 10, 2009 under OWCP File No. xxxxxx503. He indicated that he never completed the paperwork to open a new claim and requested that OWCP double the case files and adjudicate his claim as a recurrence.

In reports dated April 5 and 9, 2012, Dr. Benedict reiterated the history of appellant's injury. On July 30, 2012 he noted that he had provided appellant with medical care multiple times a year for a back injury he sustained while at work since it initially occurred on November 10, 2009. Dr. Benedict stated that he never considered appellant's back injury to be resolved and had him working under varying levels of restrictions during most periods of treatment. He indicated that appellant's original injury was caused by a faulty conveyor belt dropping an unmarked excessively heavy piece of luggage into his arms without a lifting partner or any safety equipment. Dr. Benedict opined that appellant aggravated his back condition by repetitive strain injuries caused by repetitive tasks, forceful exertions or sustained or awkward positions due to the repetitive nature of his job, which included constant standing, bending, lifting, squatting, walking and twisting with an already weakened back.

Appellant also submitted an August 1, 2011 MRI scan of the lumbar spine which showed degenerative disc disease and herniation at L5-S1.

A telephonic hearing was held before an OWCP hearing representative on August 8, 2012.

In a September 6, 2012 report, Dr. Benedict diagnosed broad-based herniated L5-S1 disc with left leg radiculopathy. He opined that appellant's condition was causally related to moving a heavy piece of luggage at work on December 17, 2011.

By decision dated September 28, 2012, an OWCP hearing representative affirmed the March 26, 2012 decision on the basis that appellant failed to establish that he sustained an injury on December 17, 2011 causally related to factors of his federal employment. The hearing representative noted that appellant had previously filed a traumatic injury claim under File No. xxxxxx503 for a lower back injury he sustained on November 10, 2009. By decision dated May 25, 2010, OWCP had accepted that appellant had sustained a lumbar strain which resolved by April 27, 2010. The hearing representative further noted that appellant "stated that he filed a claim for a recurrence in his other claim and that his employing establishment filed his traumatic injury claim in the instant claim and he did not sign his claim form in the instant claim." The hearing representative indicated that OWCP "may wish to consider doubling the instant claim with case File No. xxxxxx503" if deemed appropriate.

On September 24, 2013 appellant, through his attorney, requested reconsideration and submitted a narrative statement dated September 15, 2013. He also submitted progress notes dated May 31 through October 10, 2012 from Dr. Benedict. On September 24, 2013 Dr. Benedict stated that intervertebral discs are complex structure that allow movement of the spinal column and help absorb pressure and shock of the spinal column and they commonly deteriorate with age and are influenced by hereditary factors, weight of the person and

mechanical stress that is increased by repeated heavy lifting, bending and twisting. He opined that appellant suffered cumulative employment-related stress on his discs and had occasional flare-ups of pain and muscle spasms that gradually subsided in 2009 and 2010 when he treated him for “[l]umbar [s]trains.” Dr. Benedict explained that appellant continued to work and the cumulative employment-related stress on his discs finally caused the L5-S1 disc to herniate with resulting severe back pain, leg pain and weakness in December 2011.

By decision dated October 4, 2013, OWCP denied modification of the September 28, 2012 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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 timely filed within the applicable time limitation period of FECA, that an injury<sup>3</sup> was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>5</sup>

Causal relationship is a medical issue 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 employee, 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 employee.<sup>6</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

<sup>4</sup> *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Id.* *See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Id.* *See Gary J. Watling*, 52 ECAB 278 (2001).

## ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP procedures provide that cases should be combined when correct adjudication of the issues depends on frequent cross-reference between files. If a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.<sup>7</sup> In the instant case, appellant filed a traumatic injury claim, under File No. xxxxxx391, for a back injury. The record reveals that he previously filed a traumatic injury claim, assigned File No. xxxxxx503, for a November 10, 2009 injury to the same part of the body.<sup>8</sup> The factual and medical evidence pertaining to appellant's November 10, 2009 employment injury in File No. xxxxxx503, however, is not contained in the case record. Furthermore, the record contains evidence of appellant's attempt to file a recurrence claim of the November 10, 2009 employment injury. In his September 28, 2012 decision, OWCP's hearing representative noted that appellant had a previously accepted traumatic injury claim under File No. xxxxxx503 for a lumbar strain sustained on November 10, 2009 and indicated that OWCP "may wish to consider doubling the instant claim with case File No. xxxxxx503." However, it continued to adjudicate the claim as a new traumatic injury claim even though appellant submitted evidence to support that he sustained a recurrence of the accepted November 10, 2009 back injury. OWCP failed to properly combine or request combination of the present case record with the record of the November 10, 2009 employment injury, which appellant implicated as the initial cause of his back condition.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>9</sup> The Board will consequently remand the case for OWCP to combine the current case record with File No. xxxxxx503 and determine whether appellant sustained either a recurrence of disability due to his November 10, 2009 employment injury or a new employment injury.<sup>10</sup> Following this and any further development deemed necessary, OWCP shall issue a *de novo* decision on the merits.

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<sup>7</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000); *T.D.*, Docket No. 07-2331 (issued June 19, 2008).

<sup>8</sup> The case record also contains reference to prior traumatic injury claims of April 29, 2003, File No. xxxxxx064; May 2, 2003, File No. xxxxxx354; June 10, 2005, File No. xxxxxx872; and December 14, 2006, File No. xxxxxx649.

<sup>9</sup> See *Claudio Vazquez*, 52 ECAB 496 (2001).

<sup>10</sup> See *C.B.*, Docket No. 13-1091 (issued September 16, 2013) (remanding the case to OWCP to combine case files where the record revealed that appellant attributed a March 2, 2012 left foot injury to a previous April 12, 2004 employment injury). See also *M.Z.*, Docket No. 13-414 (issued June 26, 2012) (remanding the case to OWCP to combine case files where it did not adequately explain why it adjudicated appellant's notice of recurrence of disability as a new injury given that she alleged that she experienced pain immediately upon returning to work rather than relating her condition to new work factors).

**CONCLUSION**

The Board finds that this case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 4, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this decision of the Board.

Issued: July 1, 2014  
Washington, DC

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

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

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