



## **FACTUAL HISTORY**

This case was previously before the Board.<sup>2</sup> Appellant filed a traumatic injury claim alleging low back and neck injuries in the performance of duty on May 17, 2012. He attributed his condition to driving a small bus on a bumpy road, with the seat back as far as possible and being jolted from the bumpy ride. The Board noted that appellant's attending, orthopedic surgeon, Dr. John Steele, opined that appellant sustained cervical and lumbar strain/sprains, as well as an aggravation of spinal stenosis. The Board found that Dr. Steele did not provide a complete medical history discussing appellant's prior back and neck injuries, nor did he explain the nature and extent of any aggravation by the May 17, 2012 employment incident. Dr. Steele did not provide adequate medical rationale in support of his opinion on causal relation. The Board affirmed a January 31, 2013 OWCP decision denying the claim for compensation. The history of the case as provided in the Board's prior decision is incorporated herein by reference.

On August 30, 2013 appellant requested reconsideration and submitted a March 14, 2013 report from Dr. Steele, who noted that appellant had been tossed around while driving over a bumpy road on May 17, 2012. He opined that the employment incident aggravated his preexisting spinal stenosis, stating "Comparing his previous MRI scan reports, his MRI scan from June 25, 2012 revealed moderately severe spinal stenosis at LS-S1 which was not evident on his previous MRI scan from 1994." Dr. Steele also noted that an MRI scan of the cervical spine revealed a protruding disc at C7-T1, "which was not previously reported on an MRI scan from 1990. Stenosis was evident at C6-C7 and C7-T1 and was not present in 1990." With respect to the claimed sprain and strains, Dr. Steele stated, "Within a reasonable degree of medical certainty, there is a causal relationship between the mechanism of injury and his diagnoses of lumbar sprain/strain and cervical sprain/strain. Repeated jarring up and down on the spine can cause sprain of the musculature and aggravate spinal stenosis[-]related symptoms."

By decision dated October 30, 2013, OWCP reviewed the case on its merits and denied modification of the January 31, 2013 decision.

## **LEGAL PRECEDENT**

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."<sup>3</sup> The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."<sup>4</sup> An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.<sup>5</sup>

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<sup>2</sup> Docket No. 13-901 (issued August 1, 2013).

<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Valerie C. Boward*, 50 ECAB 126 (1998).

<sup>5</sup> *Melinda C. Epperly*, 45 ECAB 196, 198 (1993).

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally “fact of injury” consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>6</sup>

Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician’s opinion.<sup>7</sup>

### ANALYSIS

Dr. Steele submitted a March 14, 2013 report with respect to the conditions claimed as causally related to the May 17, 2012 employment incident. With respect to an aggravation of lumbar spinal stenosis, he opined that this condition was causally related to the employment incident. The Board finds that the medical rationale provided by Dr. Steele is of diminished probative value. Dr. Steele stated that the MRI scan from June 25, 2012 showed moderately severe spinal stenosis at L5-S1, whereas “this was not evident” in an MRI scan 18 years earlier. The one-page opinion provided by him did not set forth a full medical history of appellant’s cervical or lumbar conditions. This does not cure the deficiency previously noted in this case. The June 25, 2012 MRI scan documents a spinal stenosis condition; but Dr. Steele did not adequately explain why there was any contribution from the May 17, 2012 employment incident. The stated conclusion that jarring up and down can aggravate spinal stenosis does not explain the nature of such aggravation. Similarly, the existence of a cervical protruding disc on the MRI scan does not substitute for medical rationale on how or why the condition was related to the employment incident.

The Board finds that appellant has not established an aggravation of spinal stenosis or the cervical protruding disc as employment related. In this case, Dr. Steele failed to correct the deficiencies the Board noted in its prior decision. He did not provide a complete medical history, and the only additional statement he provided was that being jarred up and down can cause a sprain. This statement is general, speculative in nature and does not provide the rationale needed to establish causal relation.

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<sup>6</sup> See *John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>7</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

Based on the evidence of record, appellant has not established the 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 did not meet his burden of proof to establish a neck or low back injury causally related to the May 17, 2012 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 30, 2013 is affirmed.

Issued: July 9, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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