

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

E.L., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, MASSACHUSETTS PORT)
AUTHORITY, East Boston, MA, Employer)

**Docket No. 14-676
Issued: July 16, 2014**

Appearances:

*Alan J. Shapiro, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 4, 2014 appellant, through his attorney, filed a timely appeal from the November 27, 2013 and January 9, 2014 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying 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 met his burden of proof to establish back, neck and hernia injuries on August 14, 2012 while in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 15, 2012 appellant, then a 59-year-old transportation security officer, filed a traumatic injury claim alleging that he experienced pain in his lower back up to his neck and sustained a hernia in his chest when he twisted around as he tried to grab a beer keg that had fallen off a cart at work on August 14, 2012.

An August 16, 2012 report which contained an illegible signature noted appellant's symptoms of lumbar and cervical pain. The report stated that he had lumbar disc and cervical degeneration.

In an August 22, 2012 disability certificate, Gail Spellman, a nurse practitioner, stated that appellant may return to full-time employment with restrictions on August 23, 2012. Disability certificates dated October 23, November 2 and December 3, 2012 and January 16, 2013, signed by Dr. Polly D. Fraga, an attending Board-certified internist, stated that appellant could return to full-time employment with restrictions on October 25, November 7 and December 3, 2012 and January 17, 2013, respectively.

In a March 18, 2013 disability certificate, Dr. Fraga advised that appellant could return to full-time employment with restrictions on March 20, 2013. In a March 19, 2013 report, she provided a history that he had been treated at her clinic for back pain radiating to his left leg since March 2011. In October 2010, appellant felt a pop in his lower back when he lifted a heavy bag at work. Since that time, his pain continued and worsened. Dr. Fraga stated that when she last saw appellant on March 18, 2013, his motor function was five out of five, but hip flexion caused pain in his lower back. She advised that he had lumbar canal stenosis, lumbar neuritis and degenerative joint disease. Dr. Fraga did not expect appellant to recover, noting that he had these symptoms for a number of years with no improvement. She listed his physical restrictions and stated that they would be in place for many years, if not for the rest of his life.

In an August 27, 2012 witness statement, Thomas J. Malone, a coworker, stated that he observed the August 14, 2012 incident. He reported that appellant grabbed a falling keg to prevent property damage or injury to others.

On April 12, 2013 appellant filed a claim for compensation (Form CA-7) for leave without pay from April 7 to 20, 2013.

By letter dated April 29, 2013, OWCP advised appellant that when his claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work. Appellant was advised that the employing establishment did not controvert continuation of pay or challenge the case. Payment of a limited amount of medical expenses was administratively approved. As the merits of the claim had not been formally considered, the claim was reopened because a claim for wage loss had been received. OWCP advised appellant that the evidence submitted to date was insufficient to establish his claim. It requested that he submit additional factual and medical evidence. OWCP also requested that the employing establishment submit any medical evidence regarding treatment appellant received at its medical facility.

In an April 30, 2013 statement, appellant related that he filed a claim under OWCP File No. xxxxxx049 for a back injury sustained on October 10, 2010.² He described his worsening symptoms, diagnoses, limitations, medical treatment and work capacity.

In an April 23, 2013 report, Dr. Fraga listed a history that on October 10, 2012 appellant was performing a routine bag search and lifting a bag off the belt. Appellant twisted to the right when he transferred the bag. He heard a popping sound and immediately experienced low back pain. Appellant informed Dr. Fraga that his pain worsened at work when he grabbed a heavy keg of beer and again twisted to the right on August 14, 2012. Dr. Fraga provided findings on physical examination and assessed him as having facet syndrome and lumbar neuritis. In an April 23, 2013 disability certificate, she advised that appellant was unable to return to full-time employment for an indefinite period. In an April 25, 2013 disability certificate, Dr. Fraga stated that he may return to full-time employment with restrictions.

In a May 30, 2013 decision, OWCP accepted that the August 14, 2012 incident occurred as alleged. It denied appellant's claim, however, finding that he failed to submit sufficient medical evidence to establish that he sustained a back injury causally related to the accepted employment incident.

By letter dated June 3 2013, appellant, through his attorney, requested a telephone hearing with an OWCP hearing representative.

In a March 5, 2011 report, Dr. Sami H. Erbay, a Board-certified radiologist, advised that a magnetic resonance imaging (MRI) scan of the lumbar spine showed left paracentral disc protrusion at the L4-5 level encroaching on the left L4 root and a small free disc fragment immediately above the protruded disc at the L4-5 level that was further crowding left lateral recess.

In a November 4, 2012 report, Dr. Juan E. Small, a Board-certified radiologist, advised that a lumbar MRI scan revealed severe left-sided facet arthropathy at L5-S1 and other degenerative changes without evidence of high-grade stenosis. A mildly diffusely hypointense bone marrow signal was noted without evidence of focal abnormality.

In a February 18, 2013 report, Dr. Fraga reiterated her prior diagnosis of facet syndrome and advised that appellant had hypertension. On March 18, 2013 she reported his complaint of back pain that radiated down his left leg and his physical limitations. Dr. Fraga listed findings on physical examination and assessed appellant as having depression, hyperlipidemia, lower back pain, lumbar canal stenosis and health maintenance. In a May 21, 2013 report, she advised that the October 10, 2010 work injury contributed to his herniated disc with severe left-sided facet arthropathy along with a mild stenosis. Dr. Fraga opined that there may be other causes for appellant's back pain, but one of the causes was clearly his work activities. In a May 21, 2013 disability certificate, she stated that he was unable to return to full-time employment for an indefinite period. On August 26, 2013 Dr. Fraga reported findings on physical examination and

² The record indicates that OWCP accepted appellant's claim under File No. xxxxxx049 for a back strain sustained on October 10, 2010.

reiterated her prior diagnosis of facet syndrome. In an August 26, 2013 prescription, she ordered chiropractic treatment for appellant's facet diagnosis.

A June 12, 2013 report cosigned by Monica Sullivan, a nurse practitioner, and Dr. Thaddeus J. Nigborowicz, an internist, stated that appellant was examined for a flare-up of his work-related back injury. Appellant could return to work with restrictions on June 14, 2013.

By decision dated November 27, 2013, an OWCP hearing representative affirmed the May 30, 2013 decision, finding that appellant had failed to submit rationalized medical evidence to establish that his back conditions were causally related to the August 14, 2012 employment incident.

On December 13, 2013 appellant, through his attorney, requested reconsideration and submitted an October 3, 2013 report from Dr. Fraga. The report provided essentially the same history of the October 10, 2010 employment injury and August 14, 2012 employment incident and review of diagnostic test results listed in his prior reports. It opined that appellant's work activities, which included lifting heavy objects, bending, kneeling and squatting, could cause his disc herniation and facet arthropathy, particularly the October 10, 2010 employment injury and August 14, 2012 employment incident.

In a January 9, 2014 decision, OWCP denied modification of its prior decision. It found that Dr. Fraga's October 3, 2013 report was not sufficiently rationalized to establish that appellant sustained a back injury causally related to the August 14, 2012 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence⁴ including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁶ There are two components involved in establishing the fact of injury. 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.⁷

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁸ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁹ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹⁰

ANALYSIS

OWCP accepted that on August 14, 2012 appellant tried to grab a falling beer keg at work in the performance of duty. It found that the medical evidence failed to establish that he sustained a back injury as a result of the accepted incident. The Board finds that appellant failed to provide sufficient medical evidence to demonstrate a back condition causally related to the August 14, 2012 employment incident.

Dr. Fraga's May 21, 2013 report found that appellant's previous October 10, 2010 work-related injury contributed to his herniated disc with severe left-sided facet arthropathy along with a mild stenosis. She opined that there may be other causes for his back pain, but one of the causes was clearly his work activities. While Dr. Fraga opined that the October 10, 2010 employment injury contributed to the diagnosed lumbar conditions, she failed to adequately explain how this work-related injury or the August 12, 2012 employment incident caused or contributed to these conditions other than offering a generalized opinion that such an injury or incident caused the lumbar conditions. As she failed to provide sufficient explanation as to the mechanism of injury, Dr. Fraga general statement that appellant sustained a work-related injury is of limited probative value.¹¹ Similarly, her October 3, 2013 report is insufficient to establish appellant's claim. She found that appellant's work activities which included lifting heavy objects, bending, kneeling and squatting could cause his disc herniation and facet arthropathy, particularly the October 10, 2010 employment injury and August 14, 2012 employment incident. Although Dr. Fraga generally supported causal relationship, she did not adequately explain the basis of her conclusion.¹² The remaining reports, disability certificates and prescription from Dr. Fraga do not address whether appellant's diagnosed lumbar conditions, disability and work restrictions were caused by the August 14, 2012 employment incident. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹³

⁸ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁹ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹⁰ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹¹ *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

¹² *Id.*

¹³ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

Moreover, the November 4, 2012 diagnostic test results from Dr. Small and the June 12, 2013 report cosigned by Dr. Nigborowicz are insufficient to establish appellant's claim. Neither physician provided a medical opinion addressing whether appellant's disability, work restrictions and diagnosed lumbar conditions were caused by the August 12, 2012 employment incident.¹⁴ The Board finds, therefore, that the reports of Drs. Small and Nigborowicz are insufficient to establish appellant's claim.

Dr. Erbay's March 5, 2011 diagnostic test results predate the 2012 traumatic injury claim. Thus, his report is insufficient to establish appellant's claim.

The August 16, 2012 report which contained an illegible signature is insufficient to establish appellant's claim. Reports that are unsigned or bear illegible signatures, lack proper identification and cannot be considered probative medical evidence.¹⁵ Additionally, the August 22, 2012 disability certificate signed by Ms. Spellman, a nurse practitioner, has no probative value as a nurse practitioner is not a physician as defined under FECA.¹⁶ The Board finds that there is insufficient medical evidence of record to establish that appellant sustained a back injury causally related to the accepted August 14, 2012 employment incident.

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 has not met his burden of proof to establish that he sustained an injury on August 14, 2012 while in the performance of duty.

¹⁴ *Id.*

¹⁵ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

¹⁶ 5 U.S.C. § 8101(2); *see also, M.B.*, Docket No. 12-1695 (issued January 29, 2013).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2014 and November 27, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 16, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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