



controverted the claim noting that on September 21, 2012 appellant had told a supervisor that he was going to schedule a hernia operation. Appellant reported the alleged lifting incident to his supervisor on September 26, 2012.

The record indicates that appellant received treatment from a physician's assistant on September 26, 2012, reporting pain in the abdominal area from lifting pallets. In a report dated October 3, 2012, Dr. Lyda Rojas Carroll, a Board-certified surgeon, noted that he had been diagnosed with an umbilical hernia in January 2011. Dr. Carroll indicated that appellant stated that he was fine until lifting pallets on September 26, 2012, when he developed pain and swelling in the umbilical region. She provided results on examination, diagnosed incarcerated umbilical hernia, increasing in size and now symptomatic and indicated the option of surgery was discussed.

By form report (CA-20) dated November 29, 2012, Dr. Rabi Sinha, an internist, diagnosed umbilical hernia and checked a box "yes" that the condition was employment related. He provided a history that appellant was lifting pallets and felt pain.

In a decision dated December 13, 2012, OWCP denied the claim for compensation. It found that appellant had established incident but had not submitted sufficient factual or medical evidence to establish that the incident caused his hernia condition.

Appellant requested a hearing before an OWCP hearing representative, which was held on April 1, 2013. He disputed the allegation that surgery had been scheduled prior to the September 26, 2012 incident; although he admitted talking about getting surgery scheduled as it was something that would eventually have to be performed.

In a report dated January 2, 2013, Dr. Sinha stated that appellant had a history of an umbilical hernia and on September 26, 2012 appellant reported that he was lifting a pallet and felt pain in the hernia area. He opined that the incident caused acute pain and worsened the hernia.

In a report dated January 4, 2013, Dr. Carroll stated that appellant had lifted wood pallets at work on September 26, 2012 and stated that he developed pain and swelling at the umbilical site. She stated a computerized tomography (CT) scan was performed on September 26, 2012 and a "fat containing paraumbilical hernia" was observed. Dr. Carroll opined that this change in appellant's hernia status was due to lifting wood pallets and also aggravated the existing hernia and caused an incarceration.

By decision dated May 16, 2013, the hearing representative affirmed the December 12, 2012 OWCP decision.

In a letter dated November 4, 2013, appellant, through his representative, requested reconsideration of the claim. He submitted a September 9, 2013 report from Dr. Carroll, who indicated that he underwent surgery on June 28, 2013. Dr. Carroll further stated:

"Based on my medical examination and evaluation of [appellant] since January 5, 2011 to the present date, I believe that [he] did have an umbilical hernia; however, it did not become incarcerated and symptomatic, requiring surgery until the

incident occurred on September 26, 2012, when he was lifting pallets and subsequently felt a significant amount of abdominal pain, causing a reevaluation and a CT scan. My physical exam[ination] on October 3, 2012 identified an incarcerated umbilical hernia with macerated skin overlying it, which was a concern for the incarcerated umbilical hernia to perforate through the skin, which would have caused further complications and prolonged healing if these were to occur and therefore I did recommend surgical intervention despite his medical history of a clotting disorder, requiring anticoagulation. Therefore, it is my medical opinion that the incident on September 26, 2012 caused the once reducible hernia to become incarcerated and therefore required surgery.”

Dr. Carroll recommended that appellant avoid strenuous activity as he was at risk for developing a recurrent hernia.

By decision dated January 28, 2014, OWCP denied modification. It noted the September 9, 2013 report from Dr. Carroll, but found that it was not based on complete factual and medical background. The claims examiner stated, “Factual evidence indicates surgery was required due to a worsening of the underlying nonwork[-]related medical condition.”

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of 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 was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employing establishment injury.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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.<sup>4</sup> He or she must also establish that such event, incident or exposure caused an injury.<sup>5</sup>

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990). To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employing establishment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employing establishment incident caused a personal injury. See *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

<sup>4</sup> *Betty J. Smith*, 54 ECAB 174, 177 (2002).

<sup>5</sup> *Id.*; see also *Abe E. Scott*, 45 ECAB 164 (1993).

In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background,<sup>6</sup> must be one of reasonable medical certainty<sup>7</sup> and must be supported by sound medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>8</sup>

### ANALYSIS

Appellant filed a claim for injury on September 26, 2012. The initial decision dated December 13, 2012 found that the evidence was not sufficient to establish an incident occurred as alleged. The denial of the claim in the May 16, 2013 and January 28, 2014 decisions were based on a review of the medical evidence. Appellant alleged that he was lifting and stacking pallets on September 26, 2012 and there is no contrary evidence.<sup>9</sup> He provided notice of an injury to a supervisor on September 26, 2012. The employing establishment's controversion of the claim was based primarily on evidence that appellant had discussed the need for hernia surgery prior to September 26, 2012.

OWCP's claims examiner found that the "factual evidence" showed that surgery was required for a nonemployment-related condition and therefore Dr. Carroll did not have an accurate background. However, the issue of whether surgery was required is a medical issue that is determined by the medical evidence. There is no indication that Dr. Carroll lacked an accurate factual or medical history. She acknowledged that the diagnosis of an umbilical hernia was made as early as January 2011 and therefore preexisted the September 26, 2012 incident. Dr. Carroll provided an opinion in her September 9, 2013 report that, based on her examination and treatment of appellant since January 2011, the employing establishment incident had aggravated the underlying hernia and caused it to be symptomatic and incarcerated, requiring surgery. Her report is well rationalized as to how a preexisting hernia can be aggravated sufficient to require the time for surgery to be accelerated.

This evidence is sufficient to require OWCP to further develop the medical evidence.<sup>10</sup> The case will be remanded to OWCP for further development of the medical evidence on the issue of whether appellant's umbilical hernia was casually related to or aggravated by the September 26, 2012 incident and if so, whether the June 28, 2013 surgery was causally related to the employing establishment injury. After such further development as OWCP finds necessary, it should issue an appropriate decision.

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<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> *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>9</sup> The Board notes that an employee's statement regarding the occurrence of an employing establishment incident is of great probative value and will stand unless refuted by strong or persuasive evidence. *Thelma Rogers*, 42 ECAB 866 (1991).

<sup>10</sup> *John J. Carlone*, *supra* note 3.

**CONCLUSION**

The Board finds that the case is not in posture for decision and is remanded to OWCP for further development of the medical evidence on the issues presented.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 28, 2014 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: July 22, 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