

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

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**B.W., Appellant**

**and**

**DEPARTMENT OF DEFENSE, DEFENSE  
COMMISSARY AGENCY, Newport, RI,  
Employer**

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**Docket No. 14-362  
Issued: May 1, 2014**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant  
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 December 5, 2013 appellant, through her attorney, filed a timely appeal from the September 9, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her 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 her burden of proof to establish that she sustained a back injury on March 14, 2013 while in the performance of duty.

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

## **FACTUAL HISTORY**

On March 14, 2013 appellant, then a 45-year-old store associate, filed a traumatic injury claim (Form CA-1) alleging a back injury as a result of lifting a bag of dog food weighing 40 or 50 pounds at 3:00 p.m. that date.

In an undated medical report, Lauren J. Martin, a registered nurse practitioner, stated that appellant was seen in the office on March 15, 2013 and reevaluated on March 26, 2013. Appellant was diagnosed as having an acute lumbar strain with radiculitis. She was excused from work from March 15 to April 8, 2013. Ms. Martin concluded that appellant could return to work on April 9, 2013 with no physical restrictions.

In a March 15, 2013 note, Dr. William D. Levin, a Board-certified family practitioner, diagnosed low back with right sciatica. He advised that appellant's prognosis was good.

By letter dated March 28, 2013, the employing establishment controverted appellant's claim. Appellant filed her claim on the same day that she told Diane Saez, her supervisor, that she would obtain a medical note putting her off work if Ms. Saez did not address her comment concerning an employee. She requested a Form CA-1 from Kim Prashaw, a secretary, between 1:30 p.m. and 2:00 p.m. on March 14, 2013 which was prior to the time of her injury. An accompanying journal report listed appellant's sales transactions between 1:30 p.m. and 3:00 p.m. on March 14, 2013 and noted that no dog food was purchased during this period.

On March 28, 2013 OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested 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 9, 2013 statement, appellant described the incident of March 14, 2013. On March 13, 2013 she told Ms. Saez that something needed to be done immediately regarding problems the employees had with another employee. Appellant denied stating that she was going to get a doctor's note. Her injury occurred the day after and not on the same day as her conversation with Ms. Saez. Appellant injured her back while helping a customer with a bag of dog food that had fallen from the bottom of the customer's cart. After her injury she asked Ms. Prashaw for a Form CA-1.

In an April 9, 2013 report, Ms. Martin stated that appellant's condition had worsened and she was being sent to a specialist for further evaluation. Appellant was medically excused through April 23, 2013 due to her back condition.

In an October 18, 2011 report, Dr. John R. Caldarelli, a Board-certified radiologist, advised that a magnetic resonance imaging (MRI) scan of the lumbar spine showed signs of degenerative disc disease and mild endplate spondylosis and mild central disc protrusion at the L4-5 and L5-S1 disc levels. There were no signs of focal marrow edema.

By letter dated April 11, 2013, the employing establishment controverted appellant's claim for continuation of pay for the period April 9 to 23, 2013. It contended that the medical evidence was insufficient to establish that she was disabled for work.

In a May 2, 2013 decision, OWCP accepted that the March 14, 2013 incident occurred as alleged. It denied appellant's claim, however, finding that she failed to submit sufficient medical evidence to establish that she sustained a back injury causally related to the accepted employment incident.

On May 10, 2013 appellant requested a review of the written record by an OWCP hearing representative.

A May 10, 2013 report Dr. Sumit K. Das, a Board-certified neurosurgeon, stated that appellant should remain out of work through June 17, 2013. Appellant had low back pain that radiated through her right leg. Dr. Das advised that her symptoms occurred while picking up a heavy bag at work on March 14, 2013. An MRI scan of the lumbar spine was significant for degenerative changes with a disc herniation and an annular tear at two levels in the lumbar spine. Dr. Das concluded that the MRI scan findings and appellant's symptoms were consistent with a heavy lifting injury on March 14, 2013.

In a March 20, 2013 memorandum, Ms. Saez noted that her conversation with appellant regarding a co-employee occurred on March 13, 2013. As she was leaving work, Ms. Prashaw informed her about appellant's injury. Ms. Saez questioned why appellant did not report her injury to a manager. On March 15, 2013 she was informed by Ms. Prashaw that appellant had submitted a doctor's note placing her off work for 10 days. Ms. Saez related that the employees who worked with appellant on the date-of-injury stated that she did not tell them about her injury nor did they witness any injury.

In a March 26, 2013 memorandum, Ms. Prashaw stated that she gave appellant a Form CA-1 between 1:30 p.m. and 2:00 p.m. on March 14, 2013 for her back injury sustained on that date. At 2:30 p.m. on the same day, she informed Ms. Saez about appellant's injury and her plan to see a doctor on March 15, 2013 to be taken off work.

In a September 9, 2013 decision, an OWCP hearing representative affirmed the May 2, 2013 decision. He found that appellant failed to submit rationalized medical evidence to establish that she sustained a back injury causally related to the March 14, 2013 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence<sup>3</sup> 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.<sup>4</sup>

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<sup>2</sup> *Id.* at §§ 8101-8193.

<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>4</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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.<sup>5</sup> 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.<sup>6</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>7</sup> 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.<sup>8</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>9</sup>

### ANALYSIS

OWCP accepted that on March 14, 2013 appellant lifted a bag of dog food at work in the performance of duty. It found that the medical evidence failed to establish that she sustained a back injury as a result of the accepted incident. The Board finds that appellant failed to provide sufficient medical evidence demonstrating that she sustained a back condition causally related to the March 14, 2013 employment incident.

The May 10, 2013 report from Dr. Das stated that lumbar MRI scan findings of degenerative changes with a disc herniation and an annular tear at two levels. Dr. Das related appellant's low back pain that radiated through her right leg was caused by the March 14, 2013 employment incident. The report consists of one paragraph without any discussion of appellant's history of back pain.<sup>10</sup> Moreover, Dr. Das did not provide sufficient medical rationale explaining how the accepted employment incident caused the diagnosed conditions. His opinion is speculative stating that appellant's symptoms were consistent with a heavy lifting injury. The Board has held that a medical opinion not fortified by medical rationale is of diminished probative value.<sup>11</sup> The Board finds that Dr. Das' report does not establish appellant's claim.

Dr. Levin's March 15, 2013 note diagnosed low back with right sciatica. He did not provide a medical opinion addressing whether appellant's diagnosed back condition was caused

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<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>6</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>7</sup> *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).

<sup>8</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>9</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>10</sup> *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 8, 2008).

<sup>11</sup> *F.T.*, Docket No. 09-919 (issued December 7, 2009); *Elizabeth H. Kramm*, 57 ECAB 117, 124 (2005); *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

by the March 14, 2013 employment lifting incident.<sup>12</sup> The Board finds that Dr. Levin's report is insufficient to meet appellant's burden of proof.

Similarly, Dr. Caldarelli's October 18, 2011 diagnostic test results are insufficient to establish appellant's claim. He did not provide a medical opinion addressing how her diagnosed lumbar conditions were caused by the accepted employment lifting incident.<sup>13</sup> The Board finds, therefore, that Dr. Caldarelli's report is insufficient to establish her claim.

As the reports from Ms. Martin, a nurse, were not cosigned by a physician, they have no probative medical value to establish that appellant sustained a back injury as a result of the March 14, 2013 employment incident. A nurse practitioner is not a physician as defined under FECA.<sup>14</sup>

The Board finds that there is insufficient rationalized medical evidence of record to establish that appellant sustained a back injury causally related to the accepted March 14, 2013 employment incident. Appellant did not meet her burden of proof.

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 her burden of proof to establish that she sustained a back injury on March 14, 2013 while in the performance of duty.

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<sup>12</sup> 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).

<sup>13</sup> *Id.*+-

<sup>14</sup> See 5 U.S.C. § 8101(2); A.A., Docket No. 13-1425 (issued September 25, 2013).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 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