



## **FACTUAL HISTORY**

This case was previously before the Board. By decision dated January 2, 2014,<sup>2</sup> the Board affirmed a February 8, 2013 decision of OWCP denying appellant's traumatic injury claim for back and bilateral shoulder injuries. While appellant established as factual a June 25, 2012 work incident in which she moved tables and chairs, she did not submit sufficient medical evidence explaining how those tasks caused the claimed injuries. The facts of the case as set forth in the Board's prior decision are incorporated by reference.<sup>3</sup>

In a May 24, 2014 letter, appellant requested reconsideration. She asserted that OWCP should accept her claim as the Social Security Administration (SSA) approved her application for disability benefits. Appellant also contended that the medical evidence of record was sufficient to establish her claim. She submitted a November 5, 2013 report from Dr. William M. Shanks, a Board-certified orthopedic surgeon, performing an evaluation for a state benefits agency. Dr. Shanks related appellant's account of "taking down tents" on June 25, 2012 and summarized her treatment history. On examination, he noted a left-sided limp, tenderness to palpation of the lumbar spine, limited lumbar motion, possible weakness in the left foot, tenderness to palpation of both knees, mild effusion of the left knee, and limited motion at both ankles, greater on the left. Dr. Shanks obtained x-rays showing widespread lumbar degenerative disc disease, facet joint arthritis in the lower lumbar spine, early degenerative arthritis of both hips and bilateral narrowing of the medial joint space of both knees, greater on the left. He diagnosed degenerative disc disease of the lumbar spine, early degenerative arthritis of both hips and bilateral knee pain with medial joint space narrowing. Dr. Shanks found appellant disabled for work and recommended referral to a spine surgeon.

Appellant also provided documents from a state benefits agency and SSA, her letters to OWCP asking for clarification of her appeal rights, letters of recommendation from the employing establishment, position descriptions and OPM documents regarding job classification, her resume and college transcript.

By decision dated June 10, 2014, OWCP denied modification of the February 8, 2013 decision. It found the evidence submitted was insufficient to establish causal relationship. Dr. Shanks did not explain how appellant's work duties on June 25, 2012 caused or aggravated her back or shoulder conditions.<sup>4</sup>

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<sup>2</sup> Docket No. 13-1762 (issued January 2, 2014).

<sup>3</sup> During the pendency of the prior appeal, appellant submitted an employing establishment document regarding a housing allowance.

<sup>4</sup> In its June 10, 2014 decision, OWCP notes that appellant submitted a new December 14, 2013 report from Marjorie Humphrey, a physician's assistant. It found that the report was not medical evidence as it had not been signed or reviewed by a physician. Physician assistants are not considered physicians under FECA. 5 U.S.C. § 8101(2); *Richard E. Simpson*, 57 ECAB 668 (2006); *Vickey C. Randall*, 51 ECAB 357 (2000). On review of the case record, the Board notes that appellant submitted a December 14, 2012 report from Ms. Humphrey prior to the February 8, 2013 OWCP decision denying her claim. The Board finds that the June 10, 2014 reference to a December 14, 2013 report is harmless, nondispositive error.

### LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>5</sup> An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. 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. He or she must also establish that such event, incident or exposure caused an injury.<sup>6</sup>

Causal relationship is a medical issue<sup>7</sup> 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 claimant,<sup>8</sup> must be one of reasonable medical certainty<sup>9</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>10</sup>

### ANALYSIS

Appellant claimed that she sustained low back and bilateral shoulder injuries due to moving and lifting furniture on June 25, 2012. OWCP accepted the June 25, 2012 incident as factual. To establish her claim, appellant must provide evidence from a physician explaining the medical reasons why the accepted incident caused the claimed conditions.<sup>11</sup>

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<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *M.E.*, Docket No. 14-1064 (issued September 29, 2014); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>8</sup> *William Nimitz, Jr.*, 30 ECAB 567 (1979).

<sup>9</sup> *See Morris Scanlon*, 11 ECAB 384 (1960).

<sup>10</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>11</sup> *Id.*

In support of her May 24, 2014 request for reconsideration, appellant submitted a November 5, 2013 report from Dr. Shanks, a Board-certified orthopedic surgeon, who related appellant's account of the June 25, 2012 work incident, noted findings on examination, and diagnosed degenerative arthritis of the lumbar spine, both hips and both knees. Dr. Shanks did not address the issue of whether moving tables, tents and chairs at work on June 25, 2012 caused or aggravated her claimed back and shoulder conditions as diagnosed. He did not explain whether the accepted work factors caused or contributed to the development of back, shoulder, hip or knee conditions. In the absence of such rationale, Dr. Shanks' opinion is of diminished probative value.<sup>12</sup> His report is insufficient to meet appellant's burden of proof.

Appellant also provided documents from a state benefits agency and the SSA. However, the standards of other administrative agencies in determining disability differ from those of FECA and are not binding on OWCP.<sup>13</sup> Appellant submitted other correspondence to OWCP, job classification documents, letters of recommendation, her resume and college transcript. This material is not relevant to the medical issue of causal relationship.

Appellant has not established that she sustained back and shoulder injuries as alleged, as she submitted insufficient medical evidence to establish the causal relationship asserted. The Board therefore finds that OWCP's June 10, 2014 decision denying her claim was proper under the law and facts of this case.

On appeal, appellant further contends that she was injured on June 25, 2012 disassembling three party tents, tasks not previously mentioned or accepted in her claim. She did not provide factual evidence corroborating this account of events. Appellant asserts that the medical evidence accompanying her request for appeal is sufficient to establish her claim; however, the Board may not consider evidence for the first time on appeal that was not before OWCP at the time it issued its final decision.<sup>14</sup> She also contends that she remains disabled for work and that OWCP wrongfully denied her medical care. As noted, it is appellant's burden of proof to provide medical evidence supporting that the accepted June 25, 2012 work incident of moving furniture caused the claimed injuries. OWCP properly denied the claim due to deficiencies in the medical evidence.

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 established that she sustained traumatic back and shoulder injuries in the performance of duty.

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<sup>12</sup> *Id.*

<sup>13</sup> *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>14</sup> Accompanying her request for appeal, appellant submitted copies of new medical evidence, grievance forms, and documents from SSA. However, such evidence may not be considered for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 10, 2014 is affirmed.

Issued: November 21, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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