



## **FACTUAL HISTORY**

On July 24, 2013 appellant, then a 59-year-old dispatcher, filed a traumatic injury claim alleging that he developed low back and right leg pain on that date when he fell into a chair that had its settings changed without his knowledge. He stopped work that day.

In a July 26, 2013 attending physician's report (Form CA-20), Dr. Parimal J. Soni, an examining physician, diagnosed low back pain. He noted the injury occurred when appellant fell back into a chair that had been lowered without his knowledge. Dr. Soni checked "yes" to the question of whether the diagnosed condition was caused or aggravated by the identified incident with no explanation.

In a July 26, 2013 progress note, Dr. Mark B. Kerner, a treating Board-certified orthopedic surgeon, reported that appellant was status post laminectomy for an employment injury sustained in October 2012. He noted that appellant was seen for back pain following sitting into a chair at work on Wednesday. Appellant was unaware that the chair had been readjusted so that it "caused him to fall and lurch with sudden onset of" right-sided back pain radiating into his leg and buttocks. The physical examination revealed equivocal straight leg raise, difficulty getting into and out of a chair and standing with a list. Based on appellant's symptoms, Dr. Kerner opined that appellant may have suffered an annular tear, if not a significant disc herniation.

By letter dated August 12, 2013, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence required to establish his claim and provided 30 days to provide such information.

In an August 30, 2013 report, Dr. Kerner noted that appellant fell while getting into his chair at work on July 24, 2013 after it had been readjusted. Appellant reported a sudden onset of pain in his right buttock, leg and back with a grabbing sensation in his right leg. Dr. Kerner reviewed a magnetic resonance imaging (MRI) scan which showed a dramatic aseptic discitis in the lumbar spine which he opined was a traumatic inflammatory injury. He related that in October 2012 appellant underwent surgery for a laminectomy at L4-5, which was the level of his current injury. Dr. Kerner diagnosed lumbar strain and postlaminectomy lumbar syndrome with lumbar aseptic discitis. He related that the fall at work injured appellant's back and exacerbated his back and leg pain. Dr. Kerner attributed appellant's current condition to the July 24, 2013 work incident.

By decision dated September 19, 2013, OWCP denied appellant's claim. It found that he failed to establish a diagnosed medical condition causally related to the accepted July 24, 2013 work incident.<sup>2</sup>

In a September 23, 2013 report, Dr. Kerner noted that an August 15, 2013 MRI scan supported his diagnosis of lumbar spine post-traumatic aseptic discitis. He stated that appellant was totally disabled due to severe back and leg pain.

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<sup>2</sup> The record also contains an identical decision denying appellant's claim dated September 24, 2013. However, the September 24, 2013 decision is unsigned while the September 19, 2013 decision is signed by both, the claims examiner and supervisory claims examiner.

In a letter dated September 24, 2013, appellant requested reconsideration.

By decision dated October 17, 2013, OWCP denied modification.<sup>3</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while 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 employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. 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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>8</sup> An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>9</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>10</sup> Rationalized medical

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<sup>3</sup> The Board notes that, following the October 17, 2013 decision, OWCP received additional evidence. Appellant also submitted new evidence with his appeal to the Board. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>4</sup> *Supra* note 1.

<sup>5</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> See *Elaine Pendleton*, 40 ECAB 1143 (1989); *K.K.*, Docket No. 13-1205 (issued December 13, 2013).

<sup>8</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>9</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>10</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>11</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>12</sup>

### ANALYSIS

Appellant filed a traumatic injury claim attributing his back condition to falling in his chair that had its settings changed without his knowledge. OWCP accepted that the incident occurred as alleged on July 24, 2013.

OWCP denied appellant's claim finding that the medical evidence was insufficient to establish that his low back condition was caused or aggravated by his accepted work incident.

In a July 26, 2013 attending physician's form Dr. Soni diagnosed low back and checked "yes" to the question of whether injury had been caused or aggravated by the identified employment activity. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>13</sup>

The Board finds that the medical evidence submitted by Dr. Kerner generally supports that he sustained an aggravation of his preexisting lumbar condition causally related to the accepted July 24, 2013 incident.

Dr. Kerner's reports noted that appellant had a preexisting condition for which he underwent a laminectomy L4-5 in October 2012. He reviewed the MRI scan from 2012 with that obtained in August 2013. Dr. Kerner noted an increased L4-5 contrast with small disc protrusion. He diagnosed postlaminectomy syndrome of the lumbar spine with aseptic discitis which he attributed to the July 24, 2013 work incident.

The Board finds that while Dr. Kerner's reports are not sufficient to meet appellant's burden of proof to establish his claim with regard to an aggravation of his preexisting lumbar condition, they raise a substantial inference between appellant's claimed lumbar condition and the employment injury of July 24, 2013. Dr. Kerner had a history of appellant's preexisting lumbar condition for which he underwent surgery in 2012. He had an accurate history of the accepted July 24, 2013 incident accepted in this case. Moreover, Dr. Kerner contrasted the diagnostic tests of 2012 with those obtained in 2013 on which he based a diagnosis of postlaminectomy syndrome with aseptic discitis, noting a small disc protrusion at L4-5.

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<sup>11</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>12</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>13</sup> *D.D.*, 57 ECAB 734 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005).

Based on Dr. Kerner's reports, the case will be remanded to OWCP for further development of the medical evidence. It should prepare a statement of accepted facts and obtain a rationalized medical opinion as to whether the July 24, 2013 incident caused or aggravated appellant's preexisting lumbar condition. Following this and such other development as it deems necessary, OWCP shall issue a *de novo* decision.

**CONCLUSION**

The Board finds that this case is not in posture for a decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 17 and September 19, 2013 are set aside and the case remanded for further proceedings consistent with this decision of the Board.

Issued: October 10, 2014  
Washington, DC

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

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

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