

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

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C.S., Appellant )

and )

**DEPARTMENT OF HOMELAND SECURITY,** )  
**TRANSPORTATION SECURITY** )  
**ADMINISTRATION, Gainesville, FL, Employer** )

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**Docket No. 14-1051**  
**Issued: October 23, 2014**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 3, 2014 appellant filed a timely appeal of an October 29, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), denying his traumatic injury claim. The Board also has jurisdiction over a nonmerit decision dated March 12, 2014. 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 and nonmerits of this case.

**ISSUES**

The issues are: (1) whether appellant has established that his lumbar and pelvis conditions were causally related to the accepted employment incident; and (2) whether OWCP properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

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

## **FACTUAL HISTORY**

On September 3, 2013 appellant, then a 55-year-old transportation security officer, filed a traumatic injury claim alleging that on July 19, 2013 he sustained severe pain in his right hip and back and numbness and a sharp pain radiating down his right leg due to lifting baggage off of one conveyor belt to put on another conveyor belt.

By letter dated September 19, 2013, OWCP advised appellant as to the medical and factual evidence required to support his claim. He was given 30 days to provide the requested information.

In response on September 26, 2013 appellant submitted treatment notes by Dr. Chris C.W. Kunis, an internist, which noted an injury date of July 19, 2013. On September 4, 2013 Dr. Kunis provided physical findings and work restrictions. He noted that appellant's lumbar and right thigh pain were aggravated by lifting. Diagnoses included lumbosacral strain, pelvis joint pain and lumbar degenerative disc disease. Dr. Kunis reported physical examination findings of thoracolumbar spine tenderness. A review of an x-ray interpretation showed facet arthritis. Dr. Kunis checked a box indicating that the condition was work related. Under physician comments, he checked "yes" to indicate that the injury was caused by a specific single event and the findings were consistent with appellant's statement. On September 6, 2013 Dr. Kunis indicated that appellant had reached maximum medical improvement.

By decision dated October 29, 2013, OWCP denied the claim on the ground that the medical evidence was insufficient to establish that his medical condition was causally related to the accepted July 19, 2013 incident.

On February 26, 2014 appellant requested reconsideration. He argued that his injuries were work related as they were the result of lifting luggage off of one conveyor belt to place on another conveyor belt. In support of his claim appellant resubmitted reports dated September 4 and 6, 2013 by Dr. Kunis.

By decision dated March 12, 2014, OWCP denied reconsideration.

## **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing the essential elements of his or her 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

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<sup>2</sup> *Supra* note 1.

employment injury.<sup>3</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>4</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>5</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>6</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>7</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> Rationalized medical 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>9</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>10</sup>

### **ANALYSIS -- ISSUE 1**

Appellant alleged that he sustained a right hip and back injury on July 19, 2013 due to lifting baggage off of one conveyor belt to place on another conveyor belt. OWCP denied the claim on the grounds that the medical evidence was insufficient to establish that his back, thigh and pelvis conditions were caused or aggravated by the accepted July 19, 2013 incident.

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

<sup>4</sup> S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> See *Elaine Pendleton*, 40 ECAB 1143 (1989); *K.K.*, Docket No. 13-1205 (issued December 13, 2013).

<sup>6</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Katherine J. Friday*, 47 ECAB 591 (1996).

<sup>7</sup> P.K., Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>8</sup> Y.J., Docket No. 08-1167 (issued October 7, 2008); A.D., 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>9</sup> J.J., Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>10</sup> I.J., 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In support of his claim appellant submitted two reports by Dr. Kunis, who diagnosed lumbosacral strain, pelvis joint pain and lumbar degenerative disc disease and checked a box indicating that the condition was work related. Under physician comments, Dr. Kunis checked “yes” indicating that the injury was caused by a specific single event and the findings were consistent with appellant’s statement. Although these form reports support causal relationship, they lack medical rationale specifically explaining how the act of lifting baggage off of one conveyor belt to put on another conveyor belt contributed to or aggravated the diagnosed conditions.<sup>11</sup> Dr. Kunis failed to explain the mechanism of injury on July 19, 2013 which resulted in the diagnosed conditions. 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>12</sup> Thus, the reports of Dr. Kunis are insufficient to meet appellant’s burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s conditions became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>13</sup> Causal relationship must be established by rationalized medical opinion evidence and he failed to submit such evidence.

OWCP advised appellant that it was his responsibility to provide a comprehensive medical report, which described his symptoms, test results, diagnosis, treatment and the physician’s opinion, with medical reasons, on the cause of his condition. Appellant failed to submit appropriate medical documentation in response to OWCP’s request. As there is no probative, rationalized medical evidence addressing how his claimed back condition/conditions was caused or aggravated by the July 19, 2013 employment incident, he has not met his burden of proof to establish that he sustained an injury in the performance of duty.

The Board finds that the medical evidence submitted by appellant is insufficient to establish that he sustained a diagnosed medical condition due to the accepted July 19, 2013 employment incident. Therefore, appellant has failed to meet his 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.

### **LEGAL PRECEDENT -- ISSUE 2**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>14</sup> OWCP’s regulations provide that a claimant must: (1) show that OWCP erroneously applied or

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<sup>11</sup> See *T.H.*, 59 ECAB 388 (2008); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>12</sup> *D.D.*, 57 ECAB 734 (2006); *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>13</sup> See *D.U.*, Docket No. 10-144 (issued July 27, 2010); *D.I.*, 59 ECAB 158 (2007); *Robert Broome*, 55 ECAB 339 (2004); *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>14</sup> See *supra* note 1. Section 8128(a) of FECA provides that [t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application.

interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>15</sup> To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>16</sup> When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.<sup>17</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that the refusal of OWCP to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), did not constitute an abuse of discretion.

The issue is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In his September 24, 2013 application for reconsideration, he did not show that OWCP erroneously applied or interpreted a specific point of law. Appellant did not advance a new and relevant legal argument. The underlying issue in this case was whether his injury was causally related to the July 19, 2013 employment incident. That is a medical issue which must be addressed by relevant medical evidence.<sup>18</sup>

Appellant resubmitted form reports dated September 4 and 6, 2013 from Dr. Kunis. OWCP considered these reports when it denied his claim by decision dated October 29, 2013. The Board has held that submission of evidence which repeats or duplicates evidence already of record and considered by OWCP does not constitute a basis for reopening a case and is insufficient to warrant further merit review.<sup>19</sup> As Dr. Kunis' reports are duplicative, they do not constitute relevant and pertinent new evidence.<sup>20</sup> As appellant did not submit any relevant and pertinent new evidence not previously considered by OWCP and therefore he is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(3).<sup>21</sup>

Accordingly, the Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

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<sup>15</sup> 20 C.F.R. § 10.606(b)(3). See *J.M.*, Docket No. 09-218 (issued July 24, 2009); *Susan A. Filkins*, 57 ECAB 630 (2006).

<sup>16</sup> *Id.* at § 10.607(a). See *S.J.*, Docket No. 08-2048 (issued July 9, 2009); *Robert G. Burns*, 57 ECAB 657 (2006).

<sup>17</sup> *Id.* at § 10.608(b). See *Y.S.*, Docket No. 08-440 (issued March 16, 2009); *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

<sup>18</sup> See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

<sup>19</sup> *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007); *D'Wayne Avila*, *supra* note 8.

<sup>20</sup> *A.L.*, Docket No. 08-1730 (issued March 16, 2009); *Brent A. Barnes*, 56 ECAB 336 (2005); *Saundra B. Williams*, 46 ECAB 546 (1995).

<sup>21</sup> *Saundra B. Williams*, *id.*

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that lumbar and pelvis conditions were causally related to the accepted July 19, 2013 employment incident. The Board also finds that OWCP properly denied his request for reconsideration without a merit review.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 12, 2014 and October 29, 2013 are affirmed.

Issued: October 23, 2014  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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