

FACTUAL HISTORY

On May 10, 2013 appellant, then a 40-year-old special agent, filed a claim² alleging that he reinjured his preexisting back condition by driving and sitting in a vehicle for approximately 38 hours over a 43-hour period. He indicated that the injury occurred on April 25, 2013 while he was conducting surveillance as part of his federal duties.

In a report dated April 26, 2013,³ Dr. Frank Scafuri, a Board-certified internist, provided a history that appellant had a back sprain about three years earlier with intermittent pain since then. He related that appellant was required to be in a car for approximately 40 hours and was seen for low back pain that travels down the right leg. Dr. Scafuri diagnosed recurrent back pain/muscle spasm. In a report dated May 1, 2013, he indicated that appellant stopped working on April 29, 2013. Dr. Scafuri provided results on examination and diagnosed recurrent low back pain/muscle spasm, and indicated a magnetic resonance imaging (MRI) scan was needed to rule out radiculopathy. In a note dated May 10, 2013, he stated that appellant had been diagnosed with low back pain and lumbar radiculopathy, and a lumbar MRI scan had been requested.

Dr. Scafuri submitted a report dated May 20, 2013 with results on examination. In a note of the same date he stated that appellant had been diagnosed with low back pain and radiculopathy. Dr. Scafuri stated, "The injury was directly related to [appellant] sitting in a car for 38 hours over a 42[-]hour period." In a report (Form CA-20) dated May 21, 2013, he checked a box "yes" that the low back pain with radiculopathy was employment related.

In a report dated May 30, 2013, Dr. Scafuri stated that he had initially treated appellant on April 22, 2010 for lumbar spasms, following training exercises. He stated that appellant was seen on April 26, 2013 with him stating that appellant had been sitting in a car and felt that it aggravated his back. Dr. Scafuri indicated that pain medication was prescribed. The record contains a July 19, 2013 MRI scan report from Dr. Matthew Stern, a radiologist, who diagnosed mid and lower lumbar degenerative disc changes, right posterolateral disc herniation L4-5, abutting the L6 nerve root.

By decision dated July 24, 2013, OWCP denied the claim for compensation. It found that the factual evidence was insufficient to establish the alleged incident, and the medical evidence was insufficient to establish an employment-related condition.

Appellant, through his representative, requested reconsideration by letter dated July 26, 2013. He submitted a note from Dr. Scafuri that appellant was under his care for worsening low back pain with radiculopathy. Dr. Scafuri stated that appellant was disabled for work.

² The claim filed was a notice of recurrence (Form CA-2a) with a date-of-original injury as April 21, 2010. Appellant had a prior claim for a low back injury on that date resulting from a required fitness test. Because the CA-2a form described a new work incident, the current claim was developed as a new injury.

³ The report contains an incorrect date of April 26, 2012.

By decision dated October 10, 2013, OWCP reviewed the case on its merits and denied modification. In a letter dated January 22, 2014, appellant again requested reconsideration.

In a report dated September 23, 2013, Dr. Scafuri again indicated that he initially treated appellant in 2010, and noted his treatment since April 26, 2013. He opined that appellant sustained an L4-5 disc herniation, causing right leg radiculopathy, on April 25, 2013. By report dated November 1, 2013, Dr. Anne Stilwell, a Board-certified, international pain management specialist, provided a history and results on examination. She stated that appellant's back pain began while he was sitting for an extended period "and the herniation was caused by this." Appellant also submitted a February 12, 2014 statement from a supervisor, confirming that he was assigned surveillance duties.

By decision dated March 20, 2014, OWCP modified the basis for the denial of the claim. It accepted that appellant had been involved in a lengthy surveillance assignment, but found that the medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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 employment injury.⁴ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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.⁶ He or she must also establish that such event, incident or exposure caused an injury.⁷

In order to establish causal relationship, a physician's opinion must be based on a complete factual and medical background,⁸ must be one of reasonable medical certainty⁹ 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.¹⁰

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁶ *Betty J. Smith*, 54 ECAB 174, 177 (2002).

⁷ *Id.*; see also *Abe E. Scott*, 45 ECAB 164 (1993).

⁸ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁹ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

¹⁰ *Gary L. Fowler*, 45 ECAB 365 (1994).

ANALYSIS

In the present case, appellant has alleged that he sustained a back injury as a result of sitting and driving in a motor vehicle while in the performance of duty. He stated that during surveillance duty he was sitting in a car for approximately 38 hours out of 43 hours. Although appellant filed a recurrence of disability claim, it is properly developed as a new injury.¹¹

There was no factual evidence disputing that appellant was engaged in surveillance work on or about April 25, 2013. The March 20, 2014 decision accepted the factual allegations in this case. Therefore, the issue is whether the medical evidence is sufficient to establish the claim.

Appellant was treated by Dr. Scafuri commencing April 26, 2013. He initially diagnosed low back pain, and indicated that an MRI scan was needed to rule out radiculopathy. The description of low back pain and muscle spasms is not a firm medical diagnosis.¹² After a July 29, 2013 MRI scan, Dr. Scafuri opined that appellant had sustained an L4-5 disc herniation, with resulting radiculopathy, on April 25, 2013. But the deficiency in his reports, with respect to establishing the claim for compensation, is the absence of any medical rationale explaining the medical basis for the opinion on causal relationship. Dr. Scafuri, however, does not provide any explanation as to the medical foundation for an opinion that sitting over a two-day period caused or contributed to a diagnosed L4-5 disc herniation. He states that appellant sustained the condition on April 25, 2013, without providing sound medical reasoning or further explanation in support of the opinion. The discussion of appellant's treatment for back pain following the incident does not establish that the diagnosed L4-5 disc herniation is causally related to employment.

When a physician does not provide any explanation as to the nature and extent of any causal relationship between sitting and a lumbar condition, the report is of diminished probative value.¹³ The Board finds that the medical evidence of record is not sufficient to establish the claim for compensation in this case.

On appeal, appellant's representative states that the evidence of record is sufficient to establish the claim. For the reasons stated above, the Board finds that appellant did not meet his burden of proof in this case.

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.

¹¹ If an injury results from a new incident or exposure, it is properly considered a claim for a new injury, even if it involves a part of the body that was previously injured. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(c)(5) (June 2013).

¹² See *L.G.*, Docket No. 10-732 (issued October 7, 2010).

¹³ See, e.g., *Tyrone D. Williamson*, Docket No. 97-677 (issued November 12, 1998).

CONCLUSION

The Board finds that appellant has not established a back injury causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 20, 2014 is affirmed.¹⁴

Issued: December 1, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁴ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.