

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

S.W., Appellant

and

**DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE, New York, NY,
Employer**

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**Docket No. 15-1538
Issued: December 14, 2015**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 8, 2015 appellant, through counsel, filed a timely appeal from a March 13, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 his burden of proof to establish an injury in the performance of duty on October 30, 2010, as alleged.

FACTUAL HISTORY

This case has previously been before the Board. By decision dated December 11, 2013, the Board affirmed a May 24, 2013 OWCP decision which found that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on

¹ 5 U.S.C. § 8101 *et seq.*

October 30, 2010.² It further found that there was no medical opinion evidence which explained how the October 30, 2010 slip and fall incident caused or aggravated a preexisting condition which resulted in a lumbar discectomy at L5-S1 on February 14, 2011.³ The facts of the case as set forth in the Board's prior decision are incorporated herein by reference. The facts relevant to the present appeal are set forth below.

On September 30, 2014 OWCP received appellant's counsel's September 30, 2014 request for reconsideration. Counsel argued that the newly submitted August 13, 2014 report of Dr. Mark A.P. Filippone, a Board-certified physiatrist, established a causal relationship between appellant's low back condition and the October 30, 2010 employment incident. He further commented that the factual portion of fact of injury had been established and argued that OWCP shares responsibility in the development of the evidence.

In the newly submitted August 13, 2014 report, Dr. Filippone reported that he examined appellant for more than two hours and reviewed a file 1-1/4 inches thick. Appellant reported a history of injury that while closing a door to a theater on Ellis Island on October 30, 2010, he slipped and fell backward on a highly polished slate stairway. He indicated that he injured his back and left hand, but did not remember whether he hit his head or had loss of consciousness. Appellant also reported a prior job injury in 2008 or 2009 when another employee fell on him when the boat traveling between Ellis Island and another location had a hard landing. He indicated that he injured his back and underwent treatment for that injury for over a half year and improved. However, appellant did poorly after the October 30, 2010 slip and fall injury and had open posterior lumbar spine surgery in 2011. Dr. Filippone discussed his review of the medical file presented to him and noted examination findings. He concluded that appellant's lumbosacral radiculitis with lumbosacral radiculopathy was a direct result of the slip and fall injury at work as a Park Ranger on October 30, 2010, which may also have exacerbated a previous injury of 2009 from a prior workers' compensation injury case, which apparently was not reported. Dr. Filippone noted that appellant continued to be symptomatic as a direct result of the slip and fall injury of October 30, 2010.

By decision dated March 13, 2015, OWCP denied modification, finding that Dr. Filippone's report was insufficient to support that appellant sustained any diagnosed medical

² Docket No. 13-1831 (issued December 11, 2013).

³ On November 1, 2010 appellant, then a 57-year-old park ranger, filed a traumatic injury claim (Form CA-1) alleging injuries to his hip, leg, and back in the performance of duty on October 30, 2010 as a result of a slip and fall off the second step in Theater 2. On the claim form, Peter Wong, a witness, verified that appellant fell from the front stairs of Theater 2, landed awkwardly, and violently twisted his back and leg. By decision dated January 21, 2011, OWCP found that the October 30, 2010 incident occurred as alleged. It denied the claim as the medical evidence failed to establish a causal relationship between the diagnosed low back condition and the October 30, 2010 incident. On December 15, 2011 appellant, through counsel, requested reconsideration and submitted additional medical evidence. By decision dated March 5, 2012, OWCP denied modification of the January 21, 2011 decision. It found that the medical evidence submitted failed to provide sufficient rationale to support a causal relationship between the diagnosed conditions and the October 30, 2010 employment incident. On July 26, 2012 OWCP received appellant's counsel's July 20, 2012 letter requesting reconsideration. Additional evidence was submitted. By decision dated May 24, 2013, OWCP denied modification of its prior decision as there was no well-rationalized medical explanation with supporting objective findings as to how the October 30, 2012 employment incident directly caused, aggravated (temporarily or permanently), precipitated, or accelerated a medical condition.

condition as a result of the October 30, 2010 work incident. It also confirmed that under claim number xxxxxx822, appellant alleged injury to his left shoulder and a neck strain when another employee fell against him while docking at Ellis Island. That claim was denied by decision dated September 14, 2006.

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 injury⁴ was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵

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. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁶

Causal relationship is a medical issue 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 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.⁷

An award of compensation may not be based on surmise, conjecture, or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.⁸ To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the factors of employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination and

⁴ OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁵ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *William S. Wright*, 45 ECAB 498, 503 (1993).

appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.⁹

ANALYSIS

OWCP accepted that the October 30, 2010 incident occurred as alleged. The Board previously affirmed the denial of appellant's claim finding that there was no well-rationalized medical explanation with supporting objective findings as to how the October 30, 2010 employment incident caused or aggravated a preexisting condition which resulted in a lumbar discectomy at L5-S1 on February 14, 2011. Appellant requested reconsideration and submitted new evidence. By decision dated March 13, 2015, OWCP denied modification of its prior decisions. The Board finds that appellant did not submit sufficient medical evidence to support that he sustained an injury causally related to the October 30, 2010 employment incident.¹⁰

Dr. Filippone opined in his August 13, 2014 report that appellant's lumbosacral radiculitis with lumbosacral radiculopathy was a direct result of the slip and fall injury while at work as a Park Ranger on October 30, 2010. However, he provided no rationale as to how appellant's current back condition was caused or aggravated by the employment incident. Dr. Filippone repeats appellant's belief about the cause of his condition without offering his own opinion on causal relationship.¹¹ An opinion from a physician on causal relationship is insufficient to establish the claim if it does not explain the reasons why the accepted incident caused or aggravated a diagnosed condition.¹² Lacking thorough medical rationale on the issue of causal relationship, Dr. Filippone's report is of limited probative value and insufficient to establish that appellant sustained an employment-related injury in the performance of duty on October 30, 2010.¹³

While Dr. Filippone also opined that the October 30, 2010 employment incident may have exacerbated a previous injury from, 2009 and that appellant continued to be symptomatic as a direct result of the slip and fall injury of October 30, 2010, he failed to explain how the October 30, 2010 slip and fall would have exacerbated a previous injury or how and why appellant's current symptoms are related to the October 30, 2010 slip and fall. Additionally the record reflects appellant's claim for injuries when another employee fell against him was reported to workers' compensation and denied on September 14, 2006 under claim number xxxxxx822. The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship

⁹ *Calvin E. King*, 51 ECAB 394, 401 (2000).

¹⁰ *See Robert Broome*, 55 ECAB 339 (2004).

¹¹ *See D.D.*, Docket No. 15-291 (issued May 22, 2015).

¹² *Id.*

¹³ *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).

between the diagnosed condition and the established incident or factor of employment.¹⁴ Dr. Filippone's report does not meet that standard and is insufficient to meet appellant's burden of proof.

On appeal and before OWCP, counsel contends that Dr. Filippone's report establishes causal relationship. However, as previously noted, Dr. Filippone failed to explain how the October 30, 2010 employment incident caused or aggravated any diagnosed condition and present medical rationale in support of his opinion.¹⁵ While counsel properly asserted that the factual portion of fact of injury has been established, it remains appellant's burden to establish entitlement to compensation.

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 did not meet his burden of proof to establish that he sustained an injury on October 30, 2010 in the performance of duty, as alleged.

¹⁴ See *Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁵ *James Mack*, 43 ECAB 321 (1991).

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2015
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board