

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

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H.L., Appellant )  
and ) Docket No. 14-1910  
DEPARTMENT OF HOMELAND SECURITY, ) Issued: February 18, 2015  
IMMIGRATION & CUSTOMS )  
ENFORCEMENT, Plantation, FL, Employer )  
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)

*Appearances:*

*Lenin V. Perez*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 29, 2014 appellant, through his representative, filed a timely appeal from an April 15, 2014 Office of Workers' Compensation Programs' (OWCP) merit decision. 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 of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that his medical conditions are causally related to an April 12, 2013 employment incident, as alleged.

On appeal, appellant's representative contends that the medical evidence of record, particularly reports from the attending physician, explained how the work duties that appellant performed on the date of injury caused his diagnosed conditions.

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

## **FACTUAL HISTORY**

On May 2, 2013 appellant, then a 50-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that he injured his neck, back, jaw, testes, shoulders, arms, elbows, wrists, hands, legs, knees, ankles, feet, and left big toe on April 12, 2013 as a result of bending, reaching, lifting, and stretching to move a total of approximately 850 pounds of ammunition while conducting firearms-related duties. He stated that he moved a cart loaded with 35 boxes of ammunition weighing approximately 550 pounds, assisted in loading the boxes onto the cart, and physically moved the cart from the street up an incline, over a lip into an elevator, back over the lip to exit the elevator, and finally into a firearms room. Appellant then assisted in unloading all the boxes from the cart, plus an additional 15 boxes. He stopped work on May 8, 2013.

Appellant submitted a May 15, 2013 physical capacity evaluation and physical therapy notes dated May 22 through June 4, 2013.

In a May 22, 2013 report, Dr. Ramon Berenguer, a family medicine specialist, indicated that appellant complained of severe low back pain with radiation down the legs and bilateral hip pain. Appellant stated that he had almost constant hip pain when he walked. Dr. Berenguer further indicated that the injury, which occurred on April 12, 2013, "also caused multiple other complaints." He diagnosed arthropathy, radiculopathy lower extremities, lumbar spine pain with disc bulge at L3-4, L4-5, L5-S1, lumbar facet arthropathy, and internal derangement bilateral hips.

On May 28, 2013 Dr. Samy Bishai, an orthopedic surgeon and appellant's attending physician, indicated that appellant "suffered multiple injuries to different parts of his body in the injuries that he suffered on April 12, 2013." He stated that appellant was a special agent for the employing establishment and in the course of his employment he suffered injuries while conducting firearms-related duties. Dr. Bishai indicated that appellant was moving a cart loaded with 35 boxes of ammunition weighing approximately 550 pounds, assisted in loading the boxes onto a cart, moved the cart up an incline, in and out of an elevator, and finally into a firearms room. He diagnosed cervical and lumbar disc syndrome with radiculopathy, bunion of the first metatarsal bone of the left foot, thoracic disc syndrome with bulging discs, status postoperative right shoulder arthroscopic surgery, and internal derangement of bilateral shoulder joints, elbow joints, wrist joints, hip joints, knee joints, and ankle joints.

In a June 28, 2013 letter, OWCP indicated that, when appellant's claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay (COP) or challenge the case, payment of a limited amount of medical expenses was administratively approved. It stated that it had reopened the claim for consideration because the medical bills had exceeded \$1,500.00. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

In a May 8, 2013 report, Dr. Berenguer diagnosed lumbar disc disease, degenerative arthritis of the bilateral hip joints, and internal derangement of the right knee, left ankle, and bilateral elbows. He opined that appellant was unable to work due to the injury sustained in the performance of duty. On June 19, 2013 Dr. Berenguer diagnosed thoracic disc syndrome,

cervical and lumbar disc syndrome with radiculopathy, and internal derangement of the bilateral hips and knees.

On July 11, 2013 Dr. Bishai reiterated his medical diagnoses and opinions.

By decision dated July 30, 2013, OWCP denied appellant's claim on the basis that the medical evidence was not sufficient to establish a causal relationship between his medical conditions and the April 12, 2013 employment incident.

On August 6, 2013 appellant, through his representative, requested an oral hearing before an OWCP hearing representative and submitted reports dated August 28 and September 25, 2013 from Dr. Bishai who reiterated his medical diagnoses and opinions.

In an October 30, 2013 report, Dr. Berenguer diagnosed internal derangement of the bilateral shoulders, elbows, and wrists.

A telephonic oral hearing was held before an OWCP hearing representative on January 30, 2014.

On February 19, 2014 Dr. Berenguer reiterated his diagnoses and indicated that appellant continued to complain of ongoing pain in the neck, shoulders, wrists, and low back radiating to the legs.

By decision dated April 15, 2014, OWCP hearing representative affirmed the July 30, 2013 decision.

### **LEGAL PRECEDENT**

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 timely filed within the applicable time limitation period of FECA, that an injury<sup>3</sup> 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.<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. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> OWCP 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).

<sup>4</sup> See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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.<sup>5</sup>

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.<sup>6</sup>

### **ANALYSIS**

OWCP has accepted that the employment incident of April 12, 2013 occurred at the time, place, and in the manner alleged. The issue is whether appellant's medical conditions resulted from the April 12, 2013 employment incident. The Board finds that appellant did not meet his burden of proof to establish a causal relationship between the conditions for which compensation is claimed and the employment incident.

In his reports, Dr. Bishai indicated that appellant "suffered multiple injuries to different parts of his body in the injuries that he suffered on April 12, 2013." He stated that appellant was a special agent for the employment establishment and in the course of his employment he suffered injuries while conducting firearms-related duties. Dr. Bishai indicated that appellant was moving a cart loaded with 35 boxes of ammunition weighing approximately 550 pounds, assisted in loading the boxes onto a cart, moved the cart up an incline, in and out of an elevator, and finally into a firearms room. He diagnosed cervical and lumbar disc syndrome with radiculopathy, bunion of the first metatarsal bone of the left foot, thoracic disc syndrome with bulging discs, status postoperative right shoulder arthroscopic surgery, and internal derangement of bilateral shoulder joints, elbow joints, wrist joints, hip joints, knee joints, and ankle joints. Dr. Bishai failed to provide a rationalized opinion explaining how moving ammunition at work on April 12, 2013 caused or aggravated his medical conditions. Dr. Bishai noted that appellant's conditions occurred while he was at work. However, such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his physical activity at work actually caused or aggravated the diagnosed conditions.<sup>7</sup> Thus, the Board finds that the reports from Dr. Bishai are insufficient to establish that appellant sustained an employment-related injury.

In his reports, Dr. Berenguer diagnosed arthropathy, radiculopathy lower extremities, lumbar spine pain with disc bulge at L3-4, L4-5, L5-S1, lumbar facet arthropathy, lumbar disc disease, degenerative arthritis of the bilateral hip joints, thoracic disc syndrome, cervical and

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<sup>5</sup> *Id.* See Shirley A. Temple, 48 ECAB 404 (1997); John J. Caralone, 41 ECAB 354 (1989).

<sup>6</sup> *Id.* See Gary J. Watling, 52 ECAB 278 (2001).

<sup>7</sup> See K.W., Docket No. 10-98 (issued September 10, 2010).

lumbar disc syndrome with radiculopathy, and internal derangement of the bilateral hips, knees, shoulders, elbows, wrists, and left ankle. He indicated that appellant sustained an injury on April 12, 2013 and opined that appellant was unable to work due to the injury sustained in the performance of duty. The Board finds that Dr. Berenguer did not provide sufficient medical rationale explaining how appellant's medical conditions were caused or aggravated by bending, reaching, lifting, and stretching to move a total of approximately 850 pounds of ammunition at work on April 12, 2013. Thus, appellant failed to meet his burden to establish a claim.

In support of his claim, appellant submitted a May 15, 2013 physical capacity evaluation and physical therapy notes dated May 22 through June 4, 2013. These documents do not constitute competent medical evidence as they do not contain rationale by a physician relating appellant's disability to his employment.<sup>8</sup> As such, the Board finds that appellant did not meet his burden of proof with these submissions.

As appellant has not submitted any rationalized medical evidence to support his allegation that he sustained an injury causally related to an April 12, 2013 employment incident, he has failed to meet his burden of proof to establish a claim for compensation.

On appeal, appellant's representative contends that the medical evidence of record, particularly reports from the attending physician, explained how the work duties that appellant performed on the date of injury caused his diagnosed conditions. Based on the findings and reasons stated above, the Board finds the representative's arguments are not substantiated.

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 met his burden of proof to establish that his medical conditions are causally related to an April 12, 2013 employment incident, as alleged.

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<sup>8</sup> See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 15, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 2015  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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