

FACTUAL HISTORY

On April 28, 2010 appellant, then a 40-year-old immigration and customs enforcement special agent, filed a traumatic injury claim alleging that on April 21, 2010 he injured his lower back doing sit-ups during an employing establishment fitness test program.

In an April 22, 2010 report, Dr. Frank Scafuri, a Board-certified internist, indicated that appellant was doing some exercise with the employing establishment and then drove home from Maryland. While driving back, appellant could not stand up straight or sit down comfortably. An impression of lumbar pain strain was provided and pain medications provided. In a May 5, 2010 report, Dr. Scafuri provided an impression of lumbar pain with radiation down the leg and opined that appellant should not work due to the pain medications. On May 5, 2010 he indicated that appellant was disabled from May 5 to 18, 2010 and could return to work on May 19, 2010 with restrictions on pain medication for lumbar pain. In a May 6, 2010 report, Dr. Scafuri indicated that appellant was seen on April 22, 2010 due to lumbar pain and was seen again on May 5, 2010 with a tender right leg and decreased range of motion secondary to pain. He requested authorization for a magnetic resonance imaging (MRI) scan of the lumbar spine to rule out radiculopathy. In a May 18, 2010 report, Dr. Scafuri noted examination findings and provided an impression of lumbar pain with radiation down the right leg and opined that appellant should not work due to continued use of pain medication. In a May 10, 2013 report, he diagnosed appellant with lower back pain and lumbar radiculopathy. Dr. Scafuri again requested authorization for an MRI scan of the lumbar spine, pain management, and orthopedic evaluation.

Treatment notes and reports from Dr. Shailesh S. Pathare, a Board-certified physiatrist, dated May 28 and June 11, 2010 were also provided. In the May 28, 2010 report, he indicated that on April 21, 2010 appellant was asked to go to Maryland to perform a physical fitness evaluation, which involved sit-ups as an exercise. While performing sit-ups, appellant felt something pop in his lower back and since that time has had progressively worsening pain. The pain worsened the next day as he continued to work and increased to the point where he had to stop working. Appellant was given pain medication, but was told by his employer to stop working. Dr. Pathare provided examination findings and provided an impression of right lumbar radiculopathy and discogenic pain. He stated that it appeared appellant injured one of his lumbar discs, L4-5 or L5-S1, when he was performing the sit-ups. Dr. Pathare opined that appellant was unable to work from May 28 to June 20, 2010 while taking pain medication. In a June 11, 2010 report, he provided a diagnostic impression of right lumbar radiculopathy and discogenic pain. Dr. Pathare noted that authorization for an MRI scan of the lumbar spine and x-rays were pending. Copies of authorizations for diagnostic testing were provided. An undated page 1 of a Form C-4, Doctor's Initial Report, was also submitted.

On May 9, 2013 appellant filed a notice of recurrence on April 25, 2013 related to his April 21, 2010 work injury. He claimed that sitting in a car conducting surveillance for 38 hours out of a 46-hour period caused severe lower back and right leg pain.

In a May 20, 2013 letter, OWCP noted that when the initial claim was received, it appeared to be a minor injury that resulted in minimal or no lost time from work and, since the employing establishment did not controvert continuation of pay or challenge the case, a limited amount of medical expenses were administratively approved and paid. However, the merits of

the claim had not been formally considered. Since appellant filed a claim of recurrence, OWCP reopened the claim for consideration. It advised that the documentation submitted was insufficient to establish the original claim as there was no physician's opinion explaining how the diagnosed conditions were caused or aggravated by the claimed work incident of doing sit-ups. Appellant was requested to submit additional factual and medical information, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury. He was accorded 30 days to submit the requested information.

In response, OWCP received additional medical reports and disability notes from Dr. Scafuri.

In the April 26, 2012 report, Dr. Scafuri reported a history of back sprain about three years previously at work with intermittent pain since then. He was recently doing security work and had to be in a car for about 40 hours and developed pain. Pain began in April 24, 2012. An impression of recurrent low back pain/muscle spasm was provided.

In the May 1, 2013 report, Dr. Scafuri indicated that appellant had a history of back sprain about three years ago at work with intermittent pain since then. Appellant reported developing recurring pain on April 24, 2013 and has not been to work since April 29, 2013. An impression of recurrent low back pain/muscle spasm was provided. An MRI scan was requested to rule out radiculopathy. In the May 10, 2013 report, Dr. Scafuri provided an impression of recurrent low back pain/muscle spasm and on May 20, 2013 he diagnosed lower back pain and radiculopathy. He opined that the injury was directly related to appellant sitting in a car for 38 hours over a 42-hour period. The May 20, 2013 report indicated an impression of recurrent low back pain/muscle spasm and that the MRI scan was still pending. Dr. Scafuri indicated that appellant was sitting in a car for over 40 hours and that may have aggravated his injury.

In the May 30, 2013 report, Dr. Scafuri provided details of appellant's care from April 22, 2010. He indicated that appellant was first seen on April 22, 2010 due to an injury sustained on April 21, 2010 at work while doing the sit-up portion of an employing establishment fitness test program in Cheltenham, Maryland. Dr. Scafuri stated that appellant exhibited signs of severe lumbar spasm with inability to stand fully or sit comfortably. Pain medication and home exercises were provided. Dr. Scafuri noted that on subsequent visits he had requested approval for an MRI scan to rule out radiculopathy but notes that it was unknown if an MRI scan had been approved there was no MRI scan report on file. He continued to note lower back pain/chronic back pain due to his injury throughout 2011 and 2012. On April 26, 2013 Dr. Scafuri noted that appellant reagravated his back during another work exercise on April 25, 2013 when he was sitting in a car for 40 hours. No diagnosis was provided. After appellant returned with worsening back pain, Dr. Scafuri requested on May 1, 2013 that appellant undergo an MRI scan to evaluate the lumbar spine. Further evaluations in May 2013 showed appellant had little improvement and was told to stay home for work. There was no indication regarding whether appellant underwent an MRI scan.

By decision dated July 16, 2013, OWCP accepted that appellant was doing sit-ups during an employment fitness test but denied the claim as he had failed to establish that the diagnosed

conditions of lumbar strain and/or radiculopathy were causally related to the accepted employment factors.

On January 23, 2014 OWCP received appellant's request for reconsideration. Medical evidence submitted in support of the request included additional reports from Dr. Scafuri.

In a September 23, 2013 report, Dr. Scafuri noted that on April 22, 2010 appellant came under his care for an April 21, 2010 work injury which occurred while appellant was performing the sit-up portion of a fitness program. He summarized appellant's office visits, noting that approval from appellant's workers' compensation insurance was still pending for an MRI scan of the lower back to rule out radiculopathy. Approximately one year later, on April 26, 2013, appellant came to the office after reaggravating his back on April 25, 2013 due to sitting in a car for 40 hours. Dr. Scafuri again summarized appellant's office visits and noted that on his last office visit on July 23, 2013, appellant was finally able to have the MRI scan done and was immediately ordered to seek neurosurgery and pain management. He opined that appellant sustained L4-5 disc herniation causing right leg radiculopathy on April 25, 2013 which was a reaggravation of an existing injury from April 21, 2010.

In a June 12, 2013 report, Dr. Scafuri provided an impression of recurrent low back pain/muscle spasm and noted that an MRI scan was still pending. In a July 3, 2013 report, he stated that appellant was seen because, while working on April 25, 2013, he threw out his back and has been experiencing chronic back pain. An impression of recurrent low back pain/muscle spasm was provided and noted that the MRI scan request was still pending. In a July 23, 2013 report, Dr. Scafuri stated that appellant had worsening lower back pain with radiculopathy and was unable to work.

By decision dated July 21, 2014, OWCP denied modification of the July 16, 2013 decision. It reviewed the evidence appellant submitted in support of his reconsideration request and found that the medical evidence continued to be insufficient to establish that doing sit-ups on April 21, 2010 caused or aggravated his condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 employment injury.² 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.³

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

² C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

³ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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.⁴

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.⁵ 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.⁶ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁷ 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 causal relationship.⁸

ANALYSIS

The record reflects that appellant first sought treatment for low back pain after performing work-related sit-up exercises on April 21, 2010. He later claimed a recurrence on April 25, 2013 related to his April 21, 2010 work injury after being in the car for about 40 hours doing security work. OWCP advised appellant that it could not process the recurrence claim until the original injury claim had been accepted.⁹ While it accepted that his alleged April 21, 2010 work incidents occurred as alleged, it denied his April 21, 2010 claim as the medical evidence failed to establish a causal relationship between his reported work activity of doing sit-ups and his back condition.

The Board finds that appellant has failed to meet his burden of proof. There is no rationalized medical evidence which explains how appellant's back condition is causally related to the accepted work event of April 21, 2010. Medical reports and disability reports were received from Dr. Scafuri pertaining to the April 21, 2010 incident. In his April 22, 2010 report, Dr. Scafuri indicated that appellant was doing some exercises with the employing establishment

⁴ See *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

⁵ See *J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

⁶ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *James Mack*, 43 ECAB 321, 329 (1991).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ Appellant may file a new claim for occupational disease if he believes he sustained additional injury on April 25, 2013 due to new factors of his federal employment. See 20 C.F.R. § 10.5(q), occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.

and, while driving back, he could not stand up straight or sit down comfortably. While he diagnosed a lumbar strain, Dr. Scafuri provided no medical rationale as to how either doing exercises or driving could have caused appellant's condition. A physician must provide a narrative description of the specific employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.¹⁰

In many of his subsequent reports, Dr. Scafuri provided impressions of lumbar pain and muscle spasm. The Board has held that pain¹¹ and spasms¹² are symptoms, but not diagnoses of a medical condition, and do not constitute a basis for payment of compensation. Thus, these reports are insufficient to meet appellant's burden of proof.

Dr. Scafuri did provide an additional May 21, 2013 report in which he diagnosed lower back pain with radiculopathy and opined that it was caused or aggravated by employment activity. While he indicated that appellant had a history of lower back pain and had reinjured his back during a work activity by sitting in a car for over 40 hours, he again did not provide medical rationale to establish that appellant had sustained a back injury in April 2010. In his September 24, 2013 report, Dr. Scafuri related that appellant sustained an L4-5 disc herniation causing right leg radiculopathy on April 25, 2013, but again did not specifically address the April 21, 2010 injury. For the above reasons, his reports are insufficient to meet appellant's burden of proof as to his alleged injury of April 21, 2010.

Appellant also submitted medical reports from Dr. Pathare. In his May 28, 2010 report, Dr. Pathare noted that, while performing sit-ups on April 21, 2010, appellant felt something pop in his lower back and since that time has had progressively worsening pain. He provided an impression of right lumbar radiculopathy and discogenic pain. Dr. Pathare also stated that it appeared appellant injured one of his lumbar discs, L4-5 or L5-S1, when he was performing the sit-ups and that appellant was disabled. In a June 11, 2010 report, he provided a diagnostic impression of right lumbar radiculopathy and discogenic pain. Dr. Pathare, however, does not provide any rationale to explain how doing sit-ups physiologically caused the diagnosed right lumbar radiculopathy. Furthermore, it is unclear how he diagnosed the lumbar radiculopathy as he noted in his June 11, 2010 report that authorization for an MRI scan of the lumbar spine and x-rays were pending. Thus, Dr. Pathare's reports are insufficient to meet appellant's burden of proof to establish that he sustained a lumbar injury on April 21, 2010.

Counsel argued on appeal that appellant had established his claim or, in the alternative, that OWCP failed to adequately develop the medical evidence in the record. Appellant claimed a recurrence of the April 21, 2010 incident on April 25, 2013. The Board notes that as appellant

¹⁰ *John W. Montoya*, 54 ECAB 306 (2003); *K.E.*, Docket No. 08-1461 (issued December 17, 2008).

¹¹ *See Robert Broome*, 55 ECAB 339 (2004).

¹² *See J.C.*, Docket No. 14-1002 (issued December 19, 2014).

has not established that the April 21, 2010 incident caused a lumbar injury, a spontaneous return of the accepted injury, causing disability, has also not been established.¹³

For the reasons listed above, the Board finds that the medical evidence did not include the necessary factual and medical history and the needed medical reasoning to meet appellant's burden of proof or to require further development by OWCP.

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 a lumbar injury on April 21, 2010.

ORDER

IT IS HEREBY ORDERED THAT the July 21, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 19, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ 20 C.F.R. § 10.5 (x) defines a recurrence of disability as: "Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness."