



## **FACTUAL HISTORY**

On July 23, 2012 appellant, then a 40-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she herniated a disc on the left side of her back on July 17, 2012 as a result of assisting a patient who was on the floor while in the performance of duty.<sup>2</sup>

In an August 10, 2012 letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a narrative statement dated September 7, 2012 and a July 16, 2012 report from Andrew Guppy, a physician's assistant, who diagnosed herniated disc at L4-5, lumbar radiculopathy, and sciatica left.

In a July 17, 2012 report, Dr. Dennis McCann, an emergency department physician, diagnosed "back pain, known L5 herniation."

A July 12, 2012 magnetic resonance imaging (MRI) scan of the lumbar spine revealed a slightly enlarging left paracentral L4-5 herniated nucleus pulposus (HNP).

In his reports dated July 2 through October 1, 2012, Dr. John Van Summern, a Board-certified family practitioner, indicated that appellant was seen on July 20, 2012 for back pain exacerbated by trying to assist a patient who was on the floor at work. He diagnosed backache, herniated disc at L4-5 and lumbar radiculopathy. Dr. Van Summern stated that appellant had a previous lumbar disc herniation and the force of the patient pulling her downward as she bent over to help him caused an exacerbation of her back pain.

On September 7, 2012 the employing establishment controverted the claim indicating that appellant did not follow established facility policies during a nonemergent situation. It stated that, on the date of injury, appellant responded to a room bell call in a patient room. When she entered the room she was directed to a patient who was on the floor. The patient was alert and had no emergent medical needs besides the fact that the patient was naked on the floor. The employing establishment indicated that at this point appellant disregarded its policies and took it upon herself to try to assist the patient by herself in attempting to cover him with a blanket and though she was trying to help him up, he grabbed onto her, trying to pull himself up and exacerbated her preexisting low back condition.

Appellant submitted a series of medical reports, including a January 23, 2009 report from Dr. Sara Charnecki, a family medicine specialist, who diagnosed lumbar strain and herniated disc at L4-5.

By decision dated October 12, 2012, OWCP found that appellant sustained a diagnosed medical condition while within the performance of duty, but denied the claim finding that she had failed to establish a causal relationship between her back condition and the July 17, 2012 employment incident due to lack of supportive medical evidence.

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<sup>2</sup> Appellant, through counsel, also filed claims for wage-loss compensation for the period September 9 through October 6, 2012.

On October 30, 2012 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

In a January 15, 2013 report, Dr. Alan Ross, a Board-certified physiatrist, diagnosed multifactorial low back pain and sacroiliac pain. He stated that appellant had low back pain off and on since 2011. Dr. Ross indicated that the pain always resolved and the last episode was in June 2012. Following a return to work, appellant tried to stand up on July 17, 2012 and a patient pulled on both her shoulders and she had severe low back pain ever since. Dr. Ross opined that appellant's back conditions were causally related to the July 17, 2012 employment incident.

A telephonic hearing was held before an OWCP hearing representative on March 5, 2013.

Appellant submitted a March 6, 2013 MRI scan of the lumbar spine, which showed an enlarging left paracentral L4-5 HNP and a March 22, 2013 report from Mr. Guppy who stated that the MRI scan did not explain her severe low back pain process which was ongoing.

The employing establishment submitted statements dated March 11 and 19, 2013, indicating that appellant knew that she had a preexisting back condition and failed to comply with the "Safe Patient Handling and Movement Policy" on the date of injury.

By decision dated May 9, 2013, the hearing representative affirmed with additional analysis the October 12, 2012 decision.<sup>3</sup>

On August 26, 2013 appellant, through counsel, requested reconsideration and submitted an August 13, 2013 report from Dr. Ross who diagnosed myofascial dysfunction, segmental dysfunction, discopathic pain, and lumbar ligamentous instability. Dr. Ross opined that the July 17, 2012 employment incident was sufficient to cause the increase in appellant's disc hernia and marked the onset of her symptoms, which persisted from July 17, 2012 to the present. He "unequivocally state[d] that her present low back pain and disability [were] due to the work injury of July 17, 2012."

By decision dated November 27, 2013, OWCP denied modification of the May 9, 2013 decision.

On April 1, 2014 appellant, through counsel, requested reconsideration and submitted a March 3, 2014 report from Dr. Ross who reviewed her medical history and reiterated his medical opinions. Dr. Ross stated that her six flares of low back pain between 2004 and July 17, 2012 consistently resolved after several days of bed rest and were not precipitated by any trauma or injury, but occurred after a minor provocation. He indicated that, in contrast, the employing incident on July 17, 2012 was caused by a definite injurious event.

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<sup>3</sup> The hearing representative further found that the July 17, 2012 employment incident did not rise to the level of willful misconduct as there was no evidence of premeditation or intentional failure to follow agency policy or reckless or wanton acts of disregard of probable injurious consequences.

By decision dated May 16, 2014, OWCP denied modification of its November 27, 2013 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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>5</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>6</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 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>7</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>8</sup>

### **ANALYSIS**

OWCP has accepted that the employment incident of July 17, 2012 occurred at the time, place, and in the manner alleged. The issue is whether appellant’s back condition resulted from the July 17, 2012 employment incident. The Board finds that she did not meet her burden of proof to establish a causal relationship between the condition for which compensation is claimed and the employment incident.

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<sup>4</sup> See *supra* note 1.

<sup>5</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>6</sup> See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

In his reports, Dr. Ross diagnosed multifactorial low back pain, sacroiliac pain, myofascial dysfunction, segmental dysfunction, discopathic pain, and lumbar ligamentous instability. He stated that appellant had low back pain off and on since 2011. Dr. Ross indicated that the pain always resolved and the last episode was in June 2012. Following a return to work, appellant tried to stand up on July 17, 2012 and a patient pulled on both her shoulders and she had severe low back pain ever since. Dr. Ross opined that her back conditions were causally related to the July 17, 2012 employment incident. In a March 3, 2014 report, he stated that appellant's six flares of low back pain between 2004 and July 17, 2012 consistently resolved after several days of bed rest and were not precipitated by any trauma or injury, but occurred after a minor provocation. Dr. Ross indicated that, in contrast, the employing incident on July 17, 2012 was caused by a definite injurious event. The Board finds that he failed to provide a rationalized opinion explaining how factors of appellant's federal employment, such as being pulled down by a patient at work, caused or aggravated her back condition. Dr. Ross noted that her condition occurred while she was at work, but such generalized statements do not establish causal relationship because they merely repeat her allegations and are unsupported by adequate medical rationale explaining how her physical activity at work actually caused or aggravated the diagnosed conditions.<sup>9</sup> He failed to provide an opinion adequately addressing how the July 17, 2012 incident contributed to appellant's preexisting back condition. Thus, the Board finds that the reports from Dr. Ross are insufficient to establish that she sustained an employment-related injury.

In his reports, Dr. Van Summern diagnosed backache, herniated disc at L4-5, and lumbar radiculopathy and indicated that appellant was seen on July 20, 2012 for back pain exacerbated by trying to assist a patient who was on the floor at work. He stated that she had a previous lumbar disc herniation and the force of the patient pulling her downward as she bent over to help him caused an exacerbation of her back pain. Dr. Van Summern noted that appellant's condition occurred while she was at work when she was pulled downward as she bent over to help a patient who was on the floor at work. The Board finds that he did not provide sufficient medical rationale explaining how her condition was caused or aggravated by being pulled down by a patient at work on July 17, 2012 as he failed to provide sufficient explanation of pathophysiologically how her ongoing condition was exacerbated. Therefore, the Board finds that the reports from Dr. Van Summern are insufficient to establish appellant's claim.

On July 17, 2012 Dr. McCann diagnosed "back pain, known L5 herniation." He failed to provide an opinion addressing how the July 17, 2012 employment incident contributed to appellant's preexisting back condition. Thus, the Board finds that she did not meet her burden of proof with this submission.

In support of her claim, appellant submitted reports from Mr. Guppy, a physician's assistant, and MRI scans dated July 12, 2012 and March 6, 2013. These documents do not constitute competent medical evidence as they do not contain rationale by a physician relating

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<sup>9</sup> See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

her disability to her employment.<sup>10</sup> As such, the Board finds that appellant did not meet her burden of proof with these submissions.

Appellant also submitted a series of medical reports, including a January 23, 2009 report from Dr. Charnecki, who diagnosed lumbar strain and herniated disc at L4-5. The Board finds that this medical evidence predates the July 17, 2012 employment incident and, therefore, lacks probative value to establish her claim.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to a July 17, 2012 employment incident, she has failed to meet her burden of proof to establish a claim for compensation.

On appeal, counsel contends that OWCP's decision is contrary to fact and law. For the reasons stated above, the Board finds counsel'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 her burden of proof to establish that her back condition is causally related to a July 17, 2012 employment incident, as alleged.

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<sup>10</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 May 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 22, 2015  
Washington, DC

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

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

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