



## **FACTUAL HISTORY**

On March 21, 2013 appellant, then a 53-year-old automotive mechanic, filed a traumatic injury claim alleging that on March 15, 2013 he sustained low back and leg pain while lifting and installing a 90- to 100-pound sump pump into a sewage tank.<sup>2</sup> In support of his claim, he submitted a March 18, 2013 report in which Dr. Brian Bacot, a Board-certified orthopedic surgeon, noted a history of debilitating low back pain that occurred on April 14, 2011 when appellant was lifting a heavy object. Dr. Bacot reported lumbar spine x-ray findings of severe L4 and L5 degenerative disc disease and an implanted spinal stimulator. He diagnosed low back pain radiating into both legs and sciatica. In a March 30, 2013 report, Dr. Alexander N. Lenard, Board-certified in orthopedic surgery and an associate of Dr. Bacot, noted that appellant had a long history of back issues dating back to the 1980s when he underwent L4-5 surgery and recently had a sudden onset of severe back pain with heavy lifting at work. Physical examination demonstrated a normal straight leg raise test. Dr. Lenard diagnosed lumbago. On April 18, 2013 Dr. Bacot reported that a computerized tomography (CT) scan of the lumbar spine confirmed a diagnosis of L4-5 degenerative disc disease and reiterated his diagnoses.

By letter dated May 3, 2013, OWCP informed appellant of the evidence needed to support his claim and asked the employing establishment to respond. In a statement dated "March 14, 2013," appellant indicated that on March 15, 2013 he was helping a coworker install a new sewage pump, and he climbed a ladder and was lifting the pump about five feet when he felt an electrical shock, after which his back immediately began to hurt. An April 15, 2013 lumbar spine CT scan study demonstrated marked degenerative disc disease at L4-5. In an April 15, 2013 attending physician's report, Dr. Bacot noted that appellant had a long history of back pain with a stimulator in place and was complaining of back pain after lifting a heavy object. He diagnosed recurrent back pain and indicated that appellant could perform light duty with no lifting or stooping. In a May 10, 2013 report, Dr. Phillip G. St Louis, a Board-certified neurosurgeon, advised that decompressive surgery was scheduled for May 14, 2013. A brief emergency department discharge summary dated May 22, 2013 indicated that appellant was seen that day with a diagnosis of back pain and lumbar strain and was to follow up with Dr. St Louis.

By decision dated June 5, 2013, OWCP denied the claim because the medical evidence was insufficient to establish that a medical condition was diagnosed in connection with the claimed work factors.

Appellant, through his attorney, timely requested a hearing, and submitted additional evidence. On August 3, 2013 Dr. Angel L. Soto Vega, a family practitioner, performed a fitness-for-duty evaluation for the employing establishment. He indicated that appellant ambulated with difficulty using a cane and also reported a history of lumbar disc disease dating to 1983 with increased pain after a lifting incident on March 15, 2013. Dr. Soto Vega noted the CT scan study findings and indicated that Dr. St Louis had recommended surgery. He also reported that he reviewed a July 15, 2013 mental health evaluation done by Anne Nayer, licensed in social work,

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<sup>2</sup> Appellant also filed a CA-7 claim for compensation for the period April 30 to May 3, 2013.

and an August 8, 2013 report from Dr. David D. Weisher, a Board-certified neurologist.<sup>3</sup> Dr. Soto Vega noted physical examination findings of pain with straight leg raising bilaterally, tenderness to palpation of the lumbar spine, and limited lumbar spine range of motion. He diagnosed severe chronic lumbar pain, lumbar degenerative disc disease, major depression, lumbar radiculitis, and lumbar muscular spasm. Dr. Soto Vega concluded that appellant was not stable and it was expected that he would suffer sudden incapacitation from carrying out job duties. On September 10, 2013 he indicated that, based on appellant's medical condition and a review of the position description, appellant could not perform the duties of automotive mechanic. Dr. Soto Vega advised that appellant's chronic degenerative spine condition was permanent.<sup>4</sup>

In an October 2, 2013 report, Dr. St Louis noted that appellant was seen for preoperative assessment. He diagnosed lumbar disc disorder without myelopathy and indicated that surgical fusion would be performed on October 3, 2013.<sup>5</sup> An October 3, 2013 CT study of the lumbar spine demonstrated multilevel spondylosis with mild central canal stenosis at L4-5 and multilevel neuroforaminal narrowing, most severe at L4-5. In reports dated October 18, 2013, Dr. St Louis noted a history of a 1983 injury with spinal stimulator placement and a new injury in 2013 that caused radiating sharp pain. He diagnosed L4-5 degenerative disc disease with severe disc space narrowing and advised that "appellant's current surgery was related to the injury of March 2013 as based on his history and also the findings at the time of surgery."

A state compensation insurance fund letter dated September 19, 2013, addressed to Dr. St Louis, indicated that his request for surgical authorization and a lumbar brace had been approved on September 19, 2013. The approval letter indicated that this was in regard to a California injury that occurred on December 29, 1983.

At the hearing, held on November 13, 2013, appellant testified that in 1983 he hurt his back at work in California, had surgery in 1984, and a spine stimulator was later inserted. He indicated that the claim was still open. Appellant stated that he began work at the employing establishment in 2006 and they were aware of his medical history including that he had a spine stimulator in place. He described the Friday, March 15, 2013 incident and indicated that he saw Dr. Bacot the following Monday, who referred him to Dr. Lenard and then went to Dr. St Louis for surgery on October 3, 2013. The hearing representative asked appellant to provide information regarding the 1983 injury in California.

A decision dated May 4, 1988 by the California Workers' Compensation Appeals Board awarded appellant 123.75 weeks of compensation, or \$16,087.50 and entitlement to further medical care.

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<sup>3</sup> Neither Ms. Nayer's nor Dr. Weisher's reports are found in the case record. Dr. Soto Vega indicated that Ms. Nayer diagnosed major depressive disorder associated with chronic lumbar pain and that Dr. Weisher indicated that appellant's examination and history suggested surgically significant lumbar stenosis.

<sup>4</sup> In a September 10, 2013 attending physician's report, Bonnie O'Rourke-Barr, a physical therapist, noted that appellant was seen at physical therapy with a diagnosis of lumbar radiculopathy. She advised that appellant had an 80 percent disability.

<sup>5</sup> An operative report is not found in the case record.

By decision dated January 20, 2014, an OWCP hearing representative found that the lifting incident occurred on March 15, 2013, but that the medical evidence did not establish a causal relationship between the March 2013 incident and any diagnosed condition.

On April 9, 2014 appellant's attorney requested reconsideration. He submitted a March 18, 2014 "to whom it may concern" letter in which Dr. St Louis noted the April 15, 2013 CT examination findings and indicated that he reviewed the findings on May 8, 2013. Dr. St. Louis stated:

"At that time, it was determined that these findings correlated with the patient's symptoms of sharp back pain shooting from lower back to bilateral buttocks and chronic numbness in calves and toe. In summary, the findings from the CT lumbar spine completed on April 15, 2013 correlate with the patient's symptoms from work-related injury from March 15, 2013. Surgery was then recommended for his L4-L5 levels."

In a merit decision dated July 3, 2014, OWCP found the evidence submitted was insufficient to modify the January 10, 2014 decision because the medical evidence did not contain a well-reasoned medical explanation with supporting objective findings explaining how the March 15, 2013 employment incident caused or aggravated appellant's lumbar condition.

#### **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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>6</sup>

OWCP regulations, at 20 C.F.R. § 10.5(ee) 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.<sup>7</sup> To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>8</sup>

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

<sup>7</sup> 20 C.F.R. § 10.5(ee) (1999, 2011); Ellen L. Noble, 55 ECAB 530 (2004).

<sup>8</sup> Gary J. Watling, *supra* note 6.

Under FECA, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>9</sup> Where the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable.<sup>10</sup> However, the normal progression of untreated disease cannot be said to constitute “aggravation” of a condition merely because the performance of normal work duties reveal the underlying condition.<sup>11</sup> For the conditions of employment to bring about an aggravation of preexisting disease, the employment must cause acceleration of the disease or precipitate disability.<sup>12</sup> When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.<sup>13</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>14</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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>15</sup> 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.<sup>16</sup>

### ANALYSIS

OWCP found and the Board agrees that the March 15, 2013 lifting incident occurred. The Board, however, finds that the medical evidence submitted by appellant is insufficient to establish that this incident caused a medical condition.

Appellant has a long history of lumbar spine degenerative disc disease. In the 1980s he sustained a work-related injury and was paid compensation by the State of California. Appellant had a spinal stimulator inserted after this injury. Following the March 15, 2013 incident, he submitted reports from attending orthopedic surgeon Dr. Bacot and his associate Dr. Lenard. Dr. Bacot indicated on March 18, 2013 that appellant’s back pain began following a lifting incident in April 2011, and both physicians reported a long history of degenerative disc disease. Neither physician related a medical condition to the March 15, 2013 lifting incident. Likewise,

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<sup>9</sup> *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

<sup>10</sup> *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

<sup>11</sup> *See Glenn C. Chasteen*, 42 ECAB 493 (1991).

<sup>12</sup> *A.C.*, *supra* note 10.

<sup>13</sup> *Raymond W. Behrens*, *supra* note 9.

<sup>14</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>15</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>16</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Dr. Soto Vega, who examined for the employing establishment, noted a long history of back pain and lumbar degenerative disc disease. He reported that appellant's pain increased after a lifting incident at work on March 15, 2013 but did not identify or diagnose a specific injury. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>17</sup>

Dr. St Louis performed a back surgery in October 2013 paid for by the California insurance fund under the California claim. While he advised on March 18, 2014 that the findings from an April 15, 2013 CT scan study of the lumbar spine correlated with appellant's symptoms from a March 15, 2013 work-related injury, he did not explain the mechanics of the March 15, 2013 lifting incident or how the incident caused an injury. He also did not explain the relationship, if any, of the previous work injury to the March 2013 incident.

Medical evidence submitted to support a claim for compensation should reflect a correct history, and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.<sup>18</sup> No physician did so 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.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish an employment-related injury on March 15, 2013.

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<sup>17</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>18</sup> *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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