

shoulder, back, and neck when she was pulling a bag off a carousel and began to feel light headed. She notified her supervisor on April 26, 2012.

In an April 30, 2012 attending physician's report (Form CA-20), Dr. Christopher M. Boni, a Doctor of Osteopathic Medicine, reported that on April 12, 2012 appellant heard a snap in her back when she was lifting a heavy bag weighing 85 pounds. He noted findings of right arm numbness and right thoracic and lumbar muscle hypertrophy. Dr. Boni diagnosed back pain, anxiety, and hypertension and checked the box marked "yes" when asked if the condition was caused or aggravated by the employment activity, noting that appellant was lifting an 85-pound checked bag. He restricted heavy lifting and released her to return to work on May 14, 2012.

In an April 30, 2012 report, Dr. Dominic S. Cerreto, a treating chiropractor, reported that examination of the thoracic spine revealed vertebral subluxation complex at the C6-7, and T1 levels. Examination of the lumbar spine revealed moderate disc degeneration with a grade 1 spondylolisthesis.

In a May 2, 2012 diagnostic report, Dr. Frederick D. Gangemi, Board-certified in physical medicine and rehabilitation, reported that an electromyography (EMG) study of the upper extremities revealed findings consistent with right C6 and right C8 nerve root irritability suggestive of radiculopathic changes at the right C6 and right C8 nerve root levels. In a May 8, 2012 (Form CA-20), he reported that appellant was lifting heavy bags and heard something pop. Dr. Gangemi diagnosed cervical radiculopathy and cervicgia and checked the box marked "yes" when asked if he believed that the condition was caused or aggravated by the employment activity.

In a June 1, 2012 (Form CA-20), Dr. Cerreto reported that appellant sustained upper thoracic pain when lifting heavy baggage. He noted findings of spinal distortions with subluxations and vertebral wedging and diagnosed radiculopathy in the right arm and spinal subluxations with myospasms. Dr. Cerreto checked the box marked "yes" when asked if he believed that the condition was caused or aggravated by the employment activity. In a June 1, 2012 duty status report (Form CA-17), he diagnosed sprain with radiculitis.

By letter dated June 28, 2012, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In a June 26, 2012 diagnostic report, Dr. Christian Annese, a Board-certified diagnostic radiologist, reported that an x-ray of the cervical spine revealed cervical spondylosis without myelopathy and an x-ray of the lumbosacral spine revealed lumbosacral spondylosis without myelopathy. A December 28, 2012 computerized tomography (CT) scan of the cervical spine revealed cervical spondylosis without myelopathy. A December 28, 2012 CT scan of the lumbar spine revealed spondylolisthesis, displacement of lumbar intervertebral disc without myelopathy, foraminal stenosis, and aortic atherosclerosis.

In a July 11, 2012 report, Dr. Gangemi reported that appellant suffered injury to her cervical and lumbosacral spine, which were related to her employment duties. He noted that the constant lifting of heavy bags caused significant wear and tear on her neck and back causing the injuries. Dr. Gangemi restricted appellant from continuing her work activities which he believed

to be the cause of her condition, noting that continued work would allow the pathologic process to worsen with nerve root impingement in her neck and back.

In a July 24, 2012 note, Dr. Richard Boiardo, a Board-certified orthopedic surgeon, reported that appellant was under his care for a preexisting spinal anterolisthesis until she developed symptoms and changes due to her work-related injury. He opined that her cervical problem was directly related to her injury.

By decision dated August 1, 2012, OWCP denied appellant's claim finding that the evidence of record failed to establish that her diagnosed conditions were causally related to the accepted April 12, 2012 employment incident.

On August 14, 2012 appellant, through counsel, requested a telephonic oral hearing before the Branch of Hearings and Review.

A hearing was held on December 12, 2012. Appellant testified that she had worked as a screener for Newark Airport for 10 years. Her duties included pulling bags, some weighing up to 85 pounds, off a baggage carousel, and putting them on a machine for scanning. Appellant stated that she never had a back problem until April 2012. On April 12, 2012 she went to pull a heavy bag and heard something in her shoulder pop, causing numbness on the right side of her body and back. Counsel for appellant argued that she had a preexisting back condition that was asymptomatic prior to the April 12, 2012 employment incident, which accelerated her underlying conditions and caused her to become symptomatic.

In support of her claim, appellant submitted a November 19, 2012 medical report from Dr. Robert Heary, a Board-certified neurological surgeon, who reported that she was a security officer at Newark airport and injured herself on April 12, 2012 when she was lifting heavy bags. Appellant was placed on light duty but was unable to continue and stopped work on April 30, 2012. Dr. Heary noted complaints of pain and summarized diagnostic findings pertaining to the cervical and lumbar spine. He diagnosed isthmic spondylolisthesis at the L5-S1 level with bilateral L5 spondylosis. Dr. Heary opined that this was likely a preexisting condition in April 2012 where the trauma disrupted fibrous adhesions and turned an asymptomatic condition into a symptomatic condition. After review of a September 7, 2012 magnetic resonance imaging (MRI) scan, Dr. Heary also diagnosed cervical herniated disc/osteophyte at C5-6 and C6-7 causing significant foraminal stenosis. He recommended surgical intervention for appellant's lumbar and cervical injuries, noting that the lumbar spine condition was currently more symptomatic.

By decision dated February 28, 2013, the Branch of Hearings and Review affirmed the August 1, 2012 decision finding that the evidence of record failed to establish that appellant's diagnosed conditions were caused by the accepted April 12, 2012 employment incident.

On August 9, 2013 appellant, through counsel, requested reconsideration of the February 28, 2013 decision. Counsel stated that he was submitting a well-rationalized report dated June 26, 2013 from Dr. Heary.

In a June 26, 2013 medical report, Dr. Heary summarized the April 12, 2012 employment incident and provided findings on physical examination. He stated that appellant was in her usual state of health on April 12, 2012 when a lifting injury occurred, which rendered her

symptomatic from both the cervical and the lumbar spine pathology. The cervical spine demonstrated significant disc herniation at both C5-6 and C6-7 and the lumbar spine demonstrated a significantly large herniated disc causing severe spinal stenosis at the level of an L5-S1 pars defect. Dr. Heary opined that appellant's symptoms, which were completely absent prior to the injury, were a direct result of the injury and would require surgical intervention.

In a July 16, 2013 diagnostic report, Dr. Gangemi reported that an EMG study of the upper extremities revealed findings consistent with a right C8 cervical radiculopathy.

By decision dated September 24, 2013, OWCP affirmed the February 23, 2013 decision finding that the evidence of record failed to establish that appellant's diagnosed conditions were caused by the accepted April 12, 2012 employment incident.

On December 11, 2013 appellant, through counsel, requested reconsideration of the September 24, 2013 OWCP decision. Counsel noted that he was submitting a December 3, 2013 medical report from Dr. Heary, which established that appellant's L5 pars fracture and two cervical herniated discs at C5-6 and C6-7 were a direct result of the work-related injury.

In a December 3, 2013 medical report, Dr. Heary presented a history of the April 12, 2012 employment incident and provided findings on examination. He summarized and reviewed a February 5, 2013 x-ray of the lumbar spine. Dr. Heary noted two ongoing active problems: an L5 pars fracture without spondylolisthesis and gross instability and a cervical herniated disc previously identified at the C5-6 and C6-7 levels. He opined with absolute medical certainty that these two problems were a direct result of the work-related injury where appellant developed severe intractable pain. Dr. Heary further stated that she required surgery for both her neck and low back injuries, recommending an anterior cervical discectomy, and a posterior decompression stabilization fusion procedure. He opined that both conditions were directly caused by appellant's work injury, noting that nonoperative therapy had been completely ineffective for the past 20 months. Dr. Heary further stated that surgical correction was necessary and should be approved by the employing establishment as the injury was a direct result of the work-related injury.

By decision dated February 21, 2014, OWCP affirmed the September 24, 2013 decision finding that the evidence of record failed to establish that appellant's diagnosed conditions were caused by the accepted April 12, 2012 employment incident.

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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability 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 occupational disease.³

² Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

³ Michael E. Smith, 50 ECAB 313 (1999).

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.⁵ 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 claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of 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.⁶

ANALYSIS

OWCP accepted that the April 12, 2012 employment incident occurred as alleged. The issue is whether appellant established that the incident caused her lumbar and cervical injuries. The Board finds that she did not submit sufficient medical evidence to support that her lumbar and cervical injuries are causally related to the April 12, 2012 employment incident.⁷

In an April 30, 2012 CA-20 form, Dr. Boni reported that on April 12, 2012 appellant heard a snap in her back when she was lifting a heavy bag weighing 85 pounds. He diagnosed back pain, anxiety, and hypertension. Although Dr. Boni checked the box marked "yes" when asked if he believed that appellant's condition was caused or aggravated by the employment incident, the Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work condition caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.⁸ Dr. Boni failed to explain the mechanism of injury by detailing how lifting an 85-pound bag would cause her injury. Moreover, his opinion references back pain as the cause of the April 12, 2012 employment incident. The Board has consistently held that pain is a description of a symptom rather than a compensable medical diagnosis.⁹ It is not possible to establish that the cause of a

⁴ *Elaine Pendleton, supra* note 2.

⁵ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁶ *James Mack*, 43 ECAB 321 (1991).

⁷ *See Robert Broome*, 55 ECAB 339 (2004).

⁸ *See Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

⁹ *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

medical condition, if Dr. Boni has not stated a diagnosis, but only notes pain.¹⁰ Without a firm medical diagnosis and reasoning explaining how the April 12, 2012 employment incident caused appellant injury, Dr. Boni's report is insufficient to meet her burden of proof.¹¹

In an April 30, 2012 report, Dr. Cerreto, a treating chiropractor, reported that examination of the thoracic spine revealed vertebral subluxation complex at the C6, C7, and T1 levels. Examination of the lumbar spine revealed moderate disc degeneration with a grade 1 spondylolisthesis. In a June 1, 2012 CA-20 form, Dr. Cerreto reported that appellant sustained upper thoracic pain when lifting heavy baggage and diagnosed radiculopathy in the right arm and spinal subluxations with myospasms. He checked the box marked "yes" when asked if he believed that the condition was caused or aggravated by the employment activity.

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is considered a physician under 5 U.S.C. § 8101(2). A chiropractor is not considered a physician under FECA unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.¹² The evidence does not reflect that Dr. Cerreto diagnosed subluxation based on the results of an x-ray as there is no indication in the reports that he obtained or reviewed x-rays when noting his subluxation findings.¹³ With respect to his diagnoses of moderate disc degeneration, grade 1 spondylolisthesis, and right arm radiculopathy, this does not constitute probative medical evidence as he does not meet the statutory definition of physician.¹⁴

In medical reports dated May 2 to July 16, 2013, Dr. Gangemi provided findings pertaining to EMG studies of the upper extremities. In a May 8, 2012 CA-20 form, he diagnosed cervical radiculopathy and cervicgia and checked the box marked "yes" when asked if he believed that the condition was caused or aggravated by the employment activity. As previously noted, a report that addresses causal relationship with a checkmark is of diminished probative value and insufficient to establish causal relationship.¹⁵ Moreover, Dr. Gangemi failed to note an accurate history of the employment incident. While the CA-20 form noted that appellant was lifting heavy bags and heard something pop, he failed to identify the date of incident which she alleges injury. The Board has found that a physician must provide a narrative description of the

¹⁰ *T.G.*, Docket No. 13-76 (issued March 22, 2013).

¹¹ *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

¹² See *Kathryn Haggerty*, 45 ECAB 383 (1994).

¹³ 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. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁴ *L.S.*, Docket No. 07-560 (issued June 22, 2007). See also *Alberta S. Williamson*, 47 ECAB 569 (1996) (The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" on a medical form report without further explanation or rationale is of diminished probative value).

¹⁵ *Supra* note 8.

identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to the diagnosed medical condition.¹⁶

In a July 11, 2012 report, Dr. Gangemi reported that appellant suffered injury to her cervical and lumbosacral spine, which was related to her employment duties. He noted that the constant lifting of heavy bags caused significant wear and tear on her neck and back, causing the injuries. The Board notes that it appears Dr. Gangemi is attributing appellant's conditions to an occupational injury produced by her work environment over a period longer than a single workday or shift rather than an injury from a single occurrence within a single workday as alleged by her in this claim.¹⁷ Moreover, Dr. Gangemi's statement on causation fails to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how lifting a heavy bag would cause or aggravate appellant's cervical and lumbar injuries.¹⁸ Thus, his opinion pertaining to her work-related duties as the cause of her injuries does not provide support for a traumatic injury claim and is insufficient to meet her burden of proof.¹⁹

In medical reports dated November 19, 2012 to December 11, 2013, Dr. Heary reported that appellant worked as a security officer at Newark airport and injured herself on April 12, 2012 when she was lifting heavy bags. He provided findings on physical examination and review of diagnostic testing. Dr. Heary diagnosed isthmic spondylolisthesis at the L5-S1 level with bilateral L5 spondylosis, disc herniation in the lower cervical spine at C5-6 and C6-7, and L5 pars fracture.

The Board finds that the opinions of Dr. Heary are not well rationalized. In his November 19, 2012 report, Dr. Heary opined that appellant's isthmic spondylolisthesis at the L5-S1 level with bilateral L5 spondylosis was likely a preexisting condition in April 2012, noting the trauma disrupted fibrous adhesions and turned an asymptomatic condition into a symptomatic condition. He failed to discuss how this preexisting condition had progressed beyond what might be expected from the natural progression of that condition.²⁰ A well-rationalized opinion is particularly warranted in this case due to appellant's history of preexisting conditions.²¹ Moreover, the Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.²² Dr. Heary's June 26, 2013 statement that appellant's symptoms

¹⁶ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁷ A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

¹⁸ *S.W.*, Docket 08-2538 (issued May 21, 2009).

¹⁹ *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

²⁰ *R.E.*, Docket No. 14-868 (issued September 24, 2014).

²¹ *K.P.*, Docket No. 14-1330 (issued October 17, 2014).

²² *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

were a direct result of the injury is highly speculative as he is attributing symptoms to the employment incident and not her diagnosed conditions.²³

In his December 11, 2013 medical report, Dr. Heary reported that appellant's L5 pars fracture and cervical herniated disc at C5-6 and C6-7 were with absolute medical certainty a direct result of the work-related injury where appellant developed severe intractable pain. His statement on causation fails to provide a sufficient explanation as to the mechanism of injury and did not adequately explain how the April 12, 2012 employment incident would cause or aggravate her preexisting injuries other than generally noting the development of pain. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.²⁴ 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 between the diagnosed condition and the established incident or factor of employment.²⁵ Without explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions, Dr. Heary's opinion is of limited probative value and insufficient to meet appellant's burden of proof.²⁶

The remaining medical evidence of record is also insufficient to establish causal relationship between appellant's lumbar and cervical conditions and the April 12, 2012 employment incident. Dr. Annese's June 26 and December 28, 2012 reports interpreted diagnostic imaging studies and provided no opinion on the cause of appellant's injury. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.²⁷ Dr. Boiardo's July 24, 2012 note is also insufficient to establish appellant's claim as the physician failed to provide examination findings, a detailed medical history, description of the employment incident, review of diagnostic studies, and an explanation of how her preexisting spinal anterolisthesis was aggravated by her April 12, 2012 work injury. Any medical opinion evidence appellant may submit to support her claim should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident, in particular physiologically, caused or aggravated her back and neck injury.²⁸

Appellant's honest belief that the April 12, 2012 employment incident caused her medical problem is not in question. That belief however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the April 12, 2012

²³ *M.R.*, Docket No. 14-11 (issued August 27, 2014).

²⁴ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

²⁵ *See Lee R. Haywood*, 48 ECAB 145 (1996).

²⁶ *See L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

²⁷ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

²⁸ *T.G.*, Docket No. 14-751 (issued October 20, 2014).

employment incident and appellant's injury. Thus, appellant has failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her cervical and lumbar injury is causally related to the April 12, 2012 employment incident, as alleged.

ORDER

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

Issued: January 27, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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