

FACTUAL HISTORY

On February 2, 2013 appellant, then a 42-year-old mail processor, filed a traumatic injury claim alleging that on that date she injured her lower back with pain radiating into her right leg due to lifting a tray of mail and experienced pain radiating into her right leg.

In an undated Authorization for Examination and/or Treatment (Form CA-16), Edgar R. Brown signing on behalf of Natasha C. Hayes, Supervisor, Distribution Operations, authorized the treatment for lower back strain due to the February 2, 2013 injury.

In a February 2, 2013 emergency room report, Jeffrey S. Weisberger, a physician assistant, diagnosed lumbar strain and right-sided sciatica. He stated that appellant's back condition was probably caused by a strain of the ligaments or muscles supporting her spine and that it might take several weeks to heal. In a February 2, 2013 disability note, Mr. Weisberger reported that appellant was seen on February 2, 2013 in the emergency room and could return to work on February 6, 2013.

In a February 5, 2013 form, Dr. Richard A. Boiardo, a treating Board-certified orthopedic surgeon, stated that appellant had been seen that day and was placed in a nonwork status until February 15, 2013.

Dr. Boiardo, in a February 12, 2013 form, checked a box "yes" that appellant was seen that day and placed in a nonwork status until February 26, 2013.

In a February 25, 2013 letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised of the medical and factual evidence required and was given 30 days to provide the information. OWCP noted that at the time her claim was received the injury appeared to be minor. The employing establishment did not controvert the claim or continuation of pay benefits. OWCP administratively approved payment of limited medical expenses.

In forms dated February 26 and March 3, 2013, Dr. Boiardo checked the boxes indicating that appellant had been seen that day and that she was disabled from work until March 17, 2013.

In a March 14, 2013 report, Dr. Michael Wilcenski, a treating physician Board-certified in pain medicine and anesthesiology, diagnosed post-traumatic lumbalgia, herniated nucleus pulposus with radiculitis, and lumbar myofascial pain syndrome. He reported a history of employment injuries on March 23, 2011, March 12, August 10, and December 8, 2012, and February 2, 2013. Appellant also related to Dr. Wilcenski that she had sustained a work injury in 2005. Dr. Wilcenski noted in his history that following the December 8, 2012 injury appellant returned to work on January 8, 2013.

On February 2, 2013 appellant went to the hospital because she began experiencing increased lower back pain. A physical examination revealed central and right lower back and upper buttock region tenderness with muscle spasm. The examination also revealed decreased sensation on light touch to the right lower extremity and motor strength within normal limits. An April 7, 2011 lumbar magnetic resonance imaging (MRI) scan showed L3-4 bilateral facet

hypertrophy, L4-5 mild disc bulging and facet hypertrophy, and L5-S1 small posterior left of mid-line disc herniation and bilateral facet hypertrophy.

By decision dated April 2, 2013, OWCP denied appellant's claim. It found that the February 2, 2013 incident occurred as alleged, but that the medical evidence did not establish a causal relationship between the diagnosed condition and the February 2, 2013 employment incident.

Following the decision, OWCP received physical therapy prescriptions and disability slips from Dr. Jeffrey A. Fossati, a treating Board-certified physiatrist, indicating that appellant was totally disabled from March 13 to April 24, 2013. Dr. Fossati diagnosed lumbar disc disease on a March 3, 2013 prescription for physical therapy.

On March 7, 2014 appellant's counsel requested reconsideration and submitted additional evidence. In reports dated March 13 and 27, and April 24, 2013, Dr. Fossati diagnosed lumbar strain and sprain, lumbar radiculopathy, and L5-S1 lumbar herniation. He noted that appellant has not worked since her February 2, 2013 employment injury due to pain. Physical examination findings included tenderness on palpation of the thoracic spine and moderate to maximum lumbar paraspinal tenderness. Lumbar range of motion included 75 degrees flexion, 20 degrees extension, and 20 degrees bilateral bending.

An April 4, 2013 MRI scan revealed L4-5 facet hypertrophy, L4-5 disc desiccation, L5-S1 degenerative changes L5-S1, diffuse disc bulging, L5-S1 left paracentral annular tear, L5-S1 facet hypertrophy, and L5-S1 foraminal disc protrusion with mild narrowing of the left foraminal.

In an April 26, 2013 report, Dr. Boiardo noted that appellant was first evaluated on August 31, 2012 when she presented with complaints of severe low back pain and sciatic radiculopathy. Appellant recounted a history of three prior work injuries including a slip and fall on March 20, 2011. Dr. Boiardo reported physical findings made that day and again, on October 28, 2012, noting her condition was unchanged. He related that appellant was seen at the emergency room on February 2, 2013 with complaints of severe low back pain and sciatica. When Dr. Boiardo saw her on February 12, 2013, a physical examination revealed restricted straight leg raising, restricted range of motion, and no progressive or gross lower extremity deficits.

Dr. Boiardo reported seeing appellant on March 3, 2013 for complaints of "severe low back pain and sciatica with an inability to work according to her estimation." A physical examination performed on March 3, 2013 revealed an unchanged systemic examination and musculoskeletal examination, restricted lumbar flexion and extension of range of motion, and difficulty heel and toe walking. Dr. Boiardo diagnosed L4-5 discogenic disease with L5-S1 herniated disc which he determined was aggravated by appellant's work activities and that her L4-5 discogenic problems and symptoms and the L5-S1 herniated disc were causally related and directly due to her multiple August 10 and December 8, 2012, and February 2, 2013 employment injuries.

By decision dated June 16, 2014, OWCP denied modification. It found the medical evidence insufficient to establish causal relationship as none of the reports of record contained a

rationalized opinion explaining how the February 2, 2013 incident caused or aggravated the diagnosed condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.³ 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.⁴

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.⁵ 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.⁶ 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.⁷ 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.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.¹⁰ 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,

² 5 U.S.C. § 8101 *et seq.*

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

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

⁹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹⁰ *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

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.¹¹

ANALYSIS

The Board finds that appellant has failed to establish an injury causally related to the accepted February 2, 2013 employment incident.

In an April 26, 2013 report, Dr. Boiardo provided physical examination findings and history of appellant's condition. He opined that her L4-5 discogenic problems and her L5-S1 herniated disc were causally related to her August 10 and December 8, 2012, and February 2, 2013 employment injuries. Dr. Boiardo's statement on causation is not complete or adequate because it fails to explain the mechanism of injury and does not explain how the February 2, 2013 employment incident caused or aggravated appellant's lumbar condition and sciatica. It is not enough to note the development of increased low back pain and sciatica on February 2, 2013. 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.¹²

Dr. Wilcenski's March 14, 2013 report contained a history of appellant's employment injuries, findings on physical examination, and diagnostic imaging studies. However, the report provided no opinion on the cause of appellant's injury.

The record also includes three reports from Dr. Fossati dated March 13 and 27, and April 24, 2013 diagnosing lumbar strain and sprain, lumbar radiculopathy, and L5-S1 lumbar herniation. Dr. Fossati conducted a physical examination, but offered no opinion as to the cause of the diagnosed conditions. Appellant also submitted disability slips from both Drs. Boiardo and Fossati. The Board has held that medical evidence without an opinion regarding the cause of an employee's condition is of limited probative value.¹³

Appellant also submitted a report from Mr. Weisberger, a physician assistant. A physician assistant is not included in the definition of physician under FECA.¹⁴ Section 8101(2) of the statute provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹² *C.O.*, Docket No. 10-189 (issued July 15, 2010); *D.D.*, 57 ECAB 734 (2006); *Frankie A. Farinacci*, 56 ECAB 723 (2005); *D.U.*, Docket No. 10-144 (issued July 27, 2010); *S.S.*, 59 ECAB 315 (2008); *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Cecelia M. Corley*, 56 ECAB 662 (2005).

¹³ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Ellen L. Noble*, 55 ECAB 530 (2004).

¹⁴ *See J.M.*, 58 ECAB 303 (2007); *Lyle E. Dayberry*, 49 ECAB 369 (1998) (the reports of a physician assistant are entitled to no weight as a physician's assistant is not a "physician" as defined by section 8101(2) of FECA).

of their practice as defined by the applicable state law.¹⁵ Because Mr. Weisberger is not considered a physician under FECA his report is not medical opinion evidence.

The April 4, 2013 MRI scan did not provide an opinion as to cause. It is therefore of diminished probative value on the issue of causal connection.¹⁶

The record lacks rationalized medical evidence establishing a causal relationship between the February 2, 2013 employment incident and the diagnosed medical conditions. Thus, appellant has failed to meet her burden of proof.

The Board notes, however, that the record does not verify that the issue of appellant's incurred medical expenses has been addressed. The record contains an undated CA-16 form noting a February 2, 2013 injury date and signed by Mr. Brown on behalf of Ms. Hayes, supervisor, Distribution Operations, authorizing medical treatment. Ordinarily, where the employing establishment authorizes treatment of a job-related injury by providing the employee a properly executed Form CA-16,¹⁷ OWCP is under contractual obligation to pay for the medical care.¹⁸ The Board finds that upon return of the case record, this matter should be addressed.

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 she sustained an injury in the performance of duty on February 2, 2013, as alleged.

¹⁵ 5 U.S.C. § 8101(2). *See also Paul Foster*, 56 ECAB 208 (2004); *Thomas O. Bouis*, 57 ECAB 602 (2006)

¹⁶ *See Mary E. Marshall*, 56 ECAB 420 (2005).

¹⁷ *See Val D. Wynn*, 40 ECAB 666 (1989); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.3(a)(3) (February 2012).

¹⁸ 5 U.S.C. § 8103; 20 C.F.R. § 10.304. *See L.B.*, Docket No. 10-469 (issued June 2, 2010); *see also* Federal (FECA) Procedure Manual, *id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 16, 2014 is affirmed.

Issued: June 25, 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