



when he bent down to remove a battery from a TRC-190. Appellant stopped work on November 9, 2012 and returned December 17, 2012.

A November 9, 2012 report from the employing establishment's health unit was submitted. This report, signed by a registered nurse, advised that appellant injured his back while bending down to remove a battery at work.

In a November 12, 2012 diagnostic report, Dr. Kenneth Levin, a Board-certified diagnostic radiologist, advised that an x-ray of the lumbar spine revealed no evidence of compression fracture, subluxation, or spondylolysis.

In a December 4, 2012 diagnostic report, Dr. Gerald Larar, Board-certified in diagnostic radiology, advised that a lumbar spine magnetic resonance imaging (MRI) scan revealed shallow annular bulging, early facet degenerative changes, and mild canal and foraminal stenosis slightly greater at L4-5.

On December 10, 2012 appellant requested authorization for physical therapy.

In a December 17, 2012 report, Dr. Richard Lippin, Board-certified in family medicine, advised that appellant injured his low back removing a battery. He noted that appellant was able to return to regular duty that day. Dr. Lippin noted that appellant was discharged from treatment. Appellant also submitted several physical therapy reports.

By letter dated January 10, 2014, OWCP notified appellant that initially his claim was administratively handled to allow medical payments, as it appeared to be a minor injury resulting in minimal or no lost time from work. However, it then advised that it was considering the merits of his claim because medical bills had exceeded \$1,500.00. OWCP advised appellant of the type of evidence needed to establish his claim.

By decision dated February 24, 2014, OWCP denied appellant's claim because medical evidence was insufficient to establish that there was a condition diagnosed in connection with the work-related incident.

On March 9, 2014 appellant requested review of the written record. In support of his request, he submitted a November 12, 2012 report from Dr. Traci Galardi, an internist, who advised that he was experiencing lumbar pain. Dr. Galardi noted that when appellant bent down to pick up a battery at work it felt as though a knife was stuck into his back. She further noted that his pain was radiating down to his right buttock and he was experiencing a tingling sensation in his right leg. On physical examination Dr. Galardi noted that lumbar range of motion was decreased due to pain and that there was tenderness and spasm in the right lower back with palpation. She assessed lumbago and noted that it was most likely a strain.

In a November 16, 2012 report, Dr. Galardi advised that appellant was experiencing lower back pain that radiated into his right leg after experiencing a work injury. She advised that he had decreased range of motion due to pain, moderate spasm on the right as compared to the left, and decreased patellar reflex on the right. Dr. Galardi again assessed lumbago.

In a December 7, 2012 report, Dr. Galardi advised that appellant had a back injury at work. She noted that he felt he was improving, but was still experiencing stiffness in the morning. On examination Dr. Galardi noted that there was still decreased range of motion due to pain, tenderness on the right with palpation, and mild spasms. She noted that an MRI scan revealed a disc bulge, degenerative changes, and canal narrowing. Dr. Galardi assessed lumbago and referred appellant for physical therapy.

In a December 14, 2012 report, Dr. Galardi advised that appellant related that he was feeling better with physical therapy and was scheduled to return to work. On examination she noted that his lumbar range of motion improved and that there was still tenderness on the right with mild spasm. Dr. Galardi assessed lumbago with a disc bulge secondary to a work injury.

By decision dated September 24, 2014, an OWCP hearing representative affirmed the February 24, 2014 decision.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,<sup>2</sup> including that he or she is an “employee” within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.<sup>3</sup> The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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 medical evidence to establish that the employment incident caused a personal injury.<sup>5</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.<sup>6</sup>

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<sup>2</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>3</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>4</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>6</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

## ANALYSIS

There is no dispute that on November 9, 2012 appellant bent down to pick up a battery at work. The evidence supports that the claimed work incident occurred as alleged. Therefore, the Board finds that the first component of fact of injury is established. However, the medical evidence is insufficient to establish that the employment incident on November 9, 2012 caused appellant's lumbago and disc bulge.

In her December 14, 2012 report, Dr. Galardi assessed lumbago with a disc bulge secondary to a work injury. This report does not explain how the work incident caused or contributed to a disc bulge or lumbago. As stated, Dr. Galardi's opinion must be supported by medical rationale explaining the relationship between the diagnosed condition and the work incident.<sup>7</sup> In her November 12, 2012 report, she related that appellant bent down to pick up a battery at work it felt as though a knife was stuck into his back. Dr. Galardi assessed lumbago and noted that it was most likely a strain. The Board has found that the mere fact that a condition manifests itself or is worsened during an employment period does not raise an inference of causal relationship between the two.<sup>8</sup> Dr. Galardi appears to state the history as given by appellant without explaining how the work incident caused the condition. In her November 16, 2012 report, she advised that appellant was experiencing lower back pain that radiated to his right leg after experiencing a work injury and assessed lumbago. Therefore, while Dr. Galardi attributes appellant's low back pain to the work incident, but does not provide medical rationale to explain how the incident caused or contributed to a particular condition. In her December 7, 2012 report, she advised that appellant had a back injury at work and assessed lumbago. These reports fail to provide a rationalized opinion on causal relationship.

In his December 17, 2012 report, Dr. Lippin advised that appellant injured his low back removing a battery. Although he offers an opinion on causal relationship, he does not explain how removing the battery caused or contributed to a diagnosed condition.<sup>9</sup>

November 12 and December 4, 2012 reports of Drs. Levin and Larar note the findings of diagnostic testing. These reports are insufficient to discharge appellant's burden of proof because they do not address how any diagnosed condition was caused or aggravated by employment duties.<sup>10</sup>

Multiple physical therapy reports were submitted. However, a physical therapist is not considered a physician as defined under FECA.<sup>11</sup> Thus, records from physical therapists are

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<sup>7</sup> *Id.*

<sup>8</sup> *Patricia Bolleter*, 40 ECAB 373 (1988).

<sup>9</sup> *Supra* note 6.

<sup>10</sup> *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

<sup>11</sup> *A.C.*, Docket No. 08-1453 (issued November 18, 2008). Under FECA, a "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

insufficient to establish the claim.<sup>12</sup> A November 9, 2012 report signed by a registered nurse is also insufficient to discharge appellant's burden of proof.<sup>13</sup>

Appellant has submitted insufficient medical evidence to establish his claim. Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.<sup>14</sup> The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated his condition.<sup>15</sup> Because appellant has not provided such medical opinion evidence in this case, he has failed to meet his burden of proof.

On appeal appellant argued that OWCP approved 12 physical therapy sessions, but only paid for four. He requests that OWCP reimburse him for the remaining sessions. The Board notes that there has been no formal denial of medical expenses by OWCP over which the Board could exercise jurisdiction authorized physical therapy in this case. Nonetheless, the Board has held that the mere fact that OWCP authorized and paid for medical treatment does not establish that the condition for which the employee received treatment was employment related.<sup>16</sup>

Appellant may submit new evidence or argument as part of a formal 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 established a traumatic injury in the performance of duty.

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<sup>12</sup>*Allen C. Hundley*, 53 ECAB 551 (2002); *Lyle E. Dayberry*, 9 ECAB 369 (1998).

<sup>13</sup> *Supra* note 11.

<sup>14</sup> *See Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>15</sup> *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

<sup>16</sup> *See Gary L. Whitmore*, 43 ECAB 441 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 24, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2015  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board