



## **FACTUAL HISTORY**

On July 31, 2013 appellant, then a 36-year-old criminal investigator, filed a traumatic injury claim alleging that on July 25, 2013, while getting tactical tools and a medical kit together to take to her car, she moved the wheelbarrow to a vertical position and felt a sharp pain and pinch in her lower back and right leg. She listed the nature of her injury as a sharp pain and pinch in the middle lower back area that shot down the back and outer area of the right thigh and leg. Appellant also noted strained/sprained lower back muscles and feeling a sensation of pinched nerve in spine.

In an August 5, 2013 report, Dr. Behnam Myers, an osteopath, noted that appellant complained of lower back pain with right leg pain, which started after lifting a wheelbarrow at work on July 25, 2013. He assessed appellant with arthralgia of the lumbar spine. An x-ray of appellant's lumbar spine taken on August 5, 2013 was interpreted by Dr. Myers as evincing no plain radiographic evidence of fractures, dislocations, or retrolisthesis. In an August 19, 2013 report, Dr. Myers noted that she was no longer in pain. He again listed the assessment as arthralgia of lumbar spine, and recommended that appellant continue physical therapy and anti-inflammatories as needed. Dr. Myers completed a Form CA-16 wherein he diagnosed arthralgia and checked the "yes" box when asked whether this condition was caused or aggravated by her employment.<sup>2</sup> He noted that he first treated appellant on August 5, 2013 and that he discharged her on August 19, 2013. Dr. Myers indicated that she was able to resume work. As ordered by Dr. Myers, appellant received physical therapy treatment in August 2013 and the physical therapy notes are part of the record.

In a March 13, 2014 letter, OWCP informed appellant that benefits had initially been paid as the employing establishment had not controverted the claim and payment of a limited amount of medical bills had been authorized. As bills had exceeded \$1,500.00, OWCP advised that the claim was being reopened for consideration and that the current documentation was insufficient to support her claim. Appellant was provided guidance as to the necessary evidence needed to establish her claim.

In response, on March 20, 2014 appellant provided further details with regard to the work incident of July 25, 2013. She noted that, following this incident, she iced her back and performed her work duties for the remainder of the day, but was practically immobile later that night and was in extreme pain. Appellant noted that she saw her physician on July 26, 2013, the day following the injury. She stated that, by the time she saw Dr. Myers on August 5, 2013, all the initial intensive and sharp pain symptoms were gone.

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<sup>2</sup> The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *D.M.*, Docket No. 13-535 (issued June 6, 2013). See also 20 C.F.R. §§ 10.300, 10.304. Although OWCP denied appellant's claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16. Upon return of the case record, OWCP should further address this issue.

By decision dated April 18, 2014, OWCP denied appellant's claim as she had not established a medical diagnosis nor had she established a causal relationship between her accepted employment incident and a medical condition.

In a form signed May 14, 2014, appellant requested an oral hearing before and review of the written record by an OWCP hearing representative. She later changed this request to a request for review of the written record.

Appellant submitted comments by Dr. Myers indicating that, along with lumbar arthralgia, she also has lumbar disc disorder without myelopathy. In an amended August 19, 2013 report, Dr. Myers assessed appellant with arthralgia of lumbar spine, foraminal encroachment (compression) of lumbar nerve root, lumbar disc disorder without myelopathy, and sprains and strains of the lumbar region. He opined that, within a reasonable degree of medical certainty, the reported symptoms of back and leg pain were causally related to the employment-related accident. Dr. Myers noted that appellant was now orthopedically stable and able to return to work.

By decision dated December 19, 2014, the hearing representative modified the April 18, 2014 decision to reflect that appellant had established a medical condition, but affirmed the decision as she failed to establish a causal relationship between the accepted work incident and the accepted medical diagnoses.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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 or exposure, which is alleged to have occurred.<sup>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>5</sup> The medical evidence required to

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<sup>3</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>4</sup> *See Elaine Pendleton*, 40 ECAB 1143 (1989); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.0803.2(a) (August 2012).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.<sup>6</sup>

### ANALYSIS

Appellant has established that on July 25, 2013 she moved a wheelbarrow in the course of her federal duties as a criminal investigator. She also established medical conditions, including foraminal encroachment of the lumbar nerve root, lumbar disc disorder without myelopathy, and sprains and strains of her lumbar region. However, OWCP denied her claim for failure to establish a causal relationship between the diagnosed medical conditions and the accepted employment incident.

In support of her claim, appellant submitted reports by Dr. Myers wherein he opined that her symptoms of back and leg pain were causally related to her employment-related accident. However, the Board has consistently held that pain is a description of a symptom rather than a compensable medical diagnosis.<sup>7</sup>

The Board also finds that physical therapist notes have no probative value as a physical therapist is not a physician as defined by FECA.<sup>8</sup>

Causal relationship must be established by rationalized medical opinion evidence from a physician.<sup>9</sup> In order to receive compensation, appellant must submit medical evidence that the diagnosed conditions were caused or aggravated by the accepted July 25, 2013 employment incident. Dr. Myers only indicated that the symptoms of back and leg pain were causally related to the employment incident. As appellant has failed to establish a causal relationship between the accepted employment incident and the accepted medical diagnoses, OWCP properly denied her claim for a traumatic injury.

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.

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<sup>6</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

<sup>7</sup> *See D.H.*, Docket No. 14-1852 (issued January 27, 2015).

<sup>8</sup> The term 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. § 8102(2); *J.G.*, Docket No. 15-251 (issued April 13, 2015); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation, as physical therapists are not physicians as defined under FECA).

<sup>9</sup> *C.K.*, Docket No. 14-1235 (issued September 11, 2014).

**CONCLUSION**

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury in the performance of duty on July 25, 2013.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 19, 2014 is affirmed.

Issued: May 26, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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