



## **FACTUAL HISTORY**

On January 24, 2015 appellant, then a 56-year-old seasonal mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed a back strain as a result of his federal employment duties. He first became aware of his condition and of its relationship to his employment on December 10, 2014.

By letters dated January 23 and 28, 2015, the employing establishment controverted the claim stating that appellant did not notify his supervisor about the injury until one month later when he was no longer employed by the employing establishment. It further stated that he was a temporary employee who was hired to support the regular workforce during the holiday season.

In a February 16, 2015 diagnostic report, Dr. Gregory Dieudonne, a Board-certified diagnostic radiologist, reported that frontal and lateral radiographs of the lumbar spine revealed normal lumbar lordosis, mild convex right curvature at L3, lumbarization of the S1 vertebral body, no fractures, no spondylosis, preserved vertebral body heights, mild disc space narrowing at L5-S1, rudimentary S1-2 disc, and mild facet joint arthropathy at L4-5 and L5-S1.

In a February 16, 2015 work status summary note, Anne Schwalm, a nurse practitioner, diagnosed work-related back sprain.

In reports dated February 19 to 24, 2015, Dr. Jacob Loturco, a treating chiropractor, reported that appellant was working as a package handler for the employing establishment and was loading and unloading boxes weighing approximately 50 pounds when he strained his back on December 10, 2014. He diagnosed lumbar sprain, nonallopathic lesions of lumbar region, nonallopathic lesions of pelvic region, and pain in limb. Dr. Loturco noted that an x-ray revealed mild degenerative joint disease generalized at L4-5 and L5-S1, negative fracture dislocation, and negative pathologic process. He checked the box marked "yes" when asked if the incident described was the competent cause of the medical injury.

By letter dated March 6, 2015, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised that a chiropractor did not qualify as a physician under FECA unless there is a diagnosed spinal subluxation as demonstrated by x-ray to exist. He was further instructed on the medical and factual evidence needed and was provided 30 days to respond.

In reports dated February 16 to March 26, 2015, Ms. Schwalm reported that appellant complained of back pain which began on December 10, 2014 after lifting and moving boxes for days during the holiday season. She diagnosed work-related back sprain.

Chiropractic progress notes dated February 19 to March 27, 2015 were also submitted. These notes were unsigned and did not diagnose a spinal subluxation, based upon x-ray.

In a March 28, 2015 narrative statement, appellant described his employment duties as a seasonal mail handler.

By letter dated April 2, 2015, the employing establishment reported that appellant was a seasonal casual mail handler and provided an official position description describing his

employment duties. It noted that he was required to lift packages, push equipment, and was allowed to rotate jobs from loading on the belt, scanning packages, and sorting mail.

By decision dated April 28, 2015, OWCP denied appellant's claim finding that the medical evidence of record failed to establish that a medical condition was caused by the accepted federal employment duties.

### **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 is causally related to the employment injury.<sup>3</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</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 which is alleged to have occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>6</sup>

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 based on a complete factual and medical background, supporting such a causal relationship.<sup>7</sup> The opinion of the physician 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

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<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>7</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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.<sup>8</sup>

### ANALYSIS

OWCP accepted that appellant engaged in repetitive activities as a seasonal mail handler. The issue, therefore, is whether appellant submitted sufficient medical evidence to establish that the employment activities caused a back injury. The Board finds that he failed to submit sufficient medical evidence to support that he sustained a back injury causally related to factors of his federal employment as a seasonal mail handler.<sup>9</sup>

The only medical evidence appellant submitted from a physician was Dr. Dieudonne's February 16, 2015 diagnostic report. This report is insufficient to establish his claim as the physician only provided diagnostic findings, but failed to offer any medical opinion regarding causal relationship. Dr. Dieudonne's report did not provide a history of injury and did not explain, with medical rationale, how appellant's employment duties would have caused any of the diagnosed conditions. Lacking an opinion regarding causal relationship, Dr. Dieudonne's report is of limited probative value.<sup>10</sup>

Appellant also submitted reports for the period February 19 to March 27, 2015 from Dr. Loturco, his treating chiropractor. Dr. Loturco reported that appellant was working as a package handler for the employing establishment and was loading and unloading boxes weighing approximately 50 pounds when he strained his back on December 10, 2014. He noted that an x-ray of the lumbar spine revealed mild degenerative joint disease at L4-5 and L5-S1 and diagnosed lumbar sprain. Dr. Loturco checked the box marked "yes" when asked if the incident described was the competent cause of the medical injury.

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.<sup>11</sup> The evidence does not reflect that Dr. Loturco diagnosed subluxation based on the results of an x-ray.<sup>12</sup> While Dr. Loturco reviewed lumbar x-rays, his

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<sup>8</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>9</sup> *See Robert Broome*, 55 ECAB 339 (2004).

<sup>10</sup> *See C.W.*, Docket No. 15-1011 (issued August 20, 2015).

<sup>11</sup> *See Kathryn Haggerty*, 45 ECAB 383 (1994).

<sup>12</sup> 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).

lumbar sprain diagnosis does not constitute probative medical evidence as he does not meet the statutory definition of a physician.<sup>13</sup>

The remaining medical evidence of record is also insufficient to establish appellant's claim. Ms. Schwalm's February 16 to March 26, 2015 treatment notes were not signed by a physician. Registered nurses, physical therapists, and physician assistants, are not physicians as defined under FECA, and their opinions are therefore of no probative value.<sup>14</sup> The Board notes that while some of Ms. Schwalm's reports were cosigned, it could not be discerned regarding whether a physician signed or authored the document.<sup>15</sup>

On appeal, appellant argues that the reports submitted from Ms. Schwalm and Dr. Loturco are sufficient to establish his claim. As previously noted, he must submit medical evidence from a qualified physician as defined under FECA.<sup>16</sup> Appellant further argues that Dr. Bruce Barron, Board-certified in occupational medicine, reviewed and countersigned all reports provided by Ms. Schwalm. The Board notes that the medical evidence submitted prior to OWCP's April 28, 2015 decision did not indicate that the reports were countersigned by Dr. Barron.<sup>17</sup> As such they are of no probative value.

In the instant case, the record is without rationalized medical evidence establishing that appellant has a diagnosed medical condition causally related to the accepted federal employment duties. OWCP advised appellant of the type of medical evidence required to establish his claim; however, he failed to submit such evidence. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.<sup>18</sup> An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>19</sup> To establish causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused his condition and, taking these factors into consideration, as well as findings upon examination and his medical history, explain how these employment factors caused or aggravated any diagnosed condition, and present medical rationale in support of his opinion.<sup>20</sup> Thus, he has failed to meet his burden of proof.

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<sup>13</sup> *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).

<sup>14</sup> *Supra* note 11. *See also Roy L. Humphrey*, *supra* note 6.

<sup>15</sup> *See also Sheila A. Johnson*, 46 ECAB 323, 327 (1994); *see Merton J. Sills*, *supra* note 12.

<sup>16</sup> *Supra* note 11.

<sup>17</sup> *Supra* note 14.

<sup>18</sup> *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>19</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>20</sup> *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).

**CONCLUSION**

The Board finds that appellant failed to meet his burden of proof to establish that he developed a back injury as a result of his federal employment duties.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 28, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 7, 2015  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board