

relationship between the June 1, 2011 employment incident, and his diagnosed medical conditions.

FACTUAL HISTORY

On December 9, 2011 appellant, then a 52-year-old civil rights specialist, filed a traumatic injury claim (Form CA-1) alleging that on June 1, 2011, while lifting a heavy box of documents off the floor and placing it in the program manager's office, he felt a sharp pain and slight muscle pull in his lower back.

By letter dated December 20, 2011, OWCP informed appellant that medical evidence, including a rationalized medical report from his treating physician, was necessary to support his claim. Appellant was afforded 30 days to submit further evidence. He did not respond to OWCP's letter.

By decision dated January 27, 2012, OWCP denied appellant's claim for an employment-related injury for failure to submit medical evidence in support of his claim.

After the January 27, 2012 decision, appellant submitted evidence in support of his claim consisting of correspondence he had sent to the employing establishment requesting leave for back pain. He also submitted a form signed by a nurse indicating that he had been seen at the Doctors Community Hospital on October 7, 2010, and that he could not return to work for two days.

In a July 27, 2012 report, Dr. Paymaun M. Lotfi, a Board-certified orthopedic surgeon, noted that appellant had hurt his back in 2010, and in June 2012 the pain started again. He related appellant's statement that he had hurt his back at work. Dr. Lotfi diagnosed sciatica, disc degeneration, and stenosis.

On August 15, 2012 appellant requested reconsideration.

In a September 10, 2012 report, Dr. Scott D. Boden, a Board-certified orthopedic surgeon, described a new patient visit, and indicated that appellant had a one-year history of low back pain and a five-month history of painless right foot drop. He noted that appellant had moderate degenerative changes throughout his lumbar spine from L2-5 with severe degenerative changes at L5-S1. Dr. Boden noted mild-to-moderate spinal stenosis, noninsulin-dependent diabetes, and obesity. He stated that at this point it was unlikely that appellant would regain strength in his leg and he was skeptical as to whether or not the diabetes was playing a larger portion in this neurologic deficit than the spinal stenosis.

Appellant also submitted physical therapy notes documenting treatment from October 2 through 19, 2012.

Appellant continued to submit claim forms. On November 16, 2012 he filed a claim for a schedule award, and a claim for leave without pay. On December 8, 2013 appellant filed a claim for an occupational disease citing the same June 1, 2011 incident. On December 15, 2013 he filed a claim for a recurrence on June 4, 2011 of the alleged June 1, 2011 injury.

In a December 6, 2013 report, Darryl Markowitz, a physician assistant, diagnosed appellant with lumbosacral/thoracic neuritis, lumbar spinal stenosis, low back pain, and morbid obesity. The history of injury noted that appellant had been a patient of “Dr. Hackett” for a two-year history of spinal stenosis and right foot drop. Appellant did some heavy lifting in 2011, however the pain stayed the same until April 2012 when he was walking down the street with a briefcase and felt cracking and popping in his low back.

By decision dated May 27, 2014, OWCP denied appellant’s claim for disability compensation.

By decision dated May 29, 2014, OWCP vacated the January 27, 2012 decision in part, finding that appellant had established diagnosed conditions of foot drop and spinal stenosis. However, it determined that the evidence was insufficient to establish that the diagnosed conditions were caused by the employment incident.

On July 10, 2014 appellant requested reconsideration.

Appellant submitted additional evidence documenting steroid injections from Dr. Deeni Bassam, a physician Board-certified in anesthesiology and pain medicine, on January 15 and February 12, 2014. In a June 18, 2014 report, Dr. Bassam noted that he saw appellant originally in December 2013 at which time he related a history of severe pain to his low back since a work-related lifting injury on June 1, 2011. He noted that since that time appellant stated that he was forced to take extensive sick leave due to the severity of his pain and symptomatology. Dr. Bassam noted that appellant never underwent the recommended surgery and that, to this date, he continued to suffer significant pain due to lack of appropriate treatment. He recommended that appellant have treatment for this condition, including further injections and possible surgery, to decompress the severe disc herniation in his back. Dr. Bassam opined “beyond reasonable doubt” that appellant’s symptoms were directly related to his lifting work injury of June 1, 2011, and recommended that the case be reopened so that appellant could undergo appropriate and timely treatment.

On July 23, 2014 OWCP received a July 13, 2012 magnetic resonance imaging (MRI) scan report of the lumbosacral spine without contrast, from Dr. Nicholas Patronas, a Board-certified radiologist. This report listed impressions of: developmentally small canal from L2 to S1 vertebra; marked disc degeneration at L5-S1, small and broad-based disc protrusion which is centrally located at L4-5, and bone spurs at L5-S1 from the vertebral bodies and from the facet joints.

By decision dated October 15, 2014, OWCP denied modification of the May 29, 2014 decision.

On November 12, 2014 appellant requested reconsideration.

In a November 10, 2014 report, Dr. Bassam noted that appellant suffered an injury while at work on June 1, 2011 which caused a disc herniation at L5-S1 with resulting compression of the right S1 nerve root. He noted that this was confirmed by an MRI scan on July 13, 2012. Dr. Bassam indicated that appellant continued to suffer from the effects of the herniated disc. He opined that the disc herniation nerve compression and foot drop were the direct result of his work-related injury of June 1, 2011. Dr. Bassam noted that the proposed treatment would

include a series of x-ray guided injections of the S1 nerve followed by surgical excision of the herniated disc. He noted that his opinion was neither speculative nor equivocal, but rather held to a high degree of medical certainty after careful review of all available records, images, and his examination.

On December 16, 2014 OWCP received a July 24, 2012 report from Dr. Jonathan R. Amy, a Board-certified neurologist. Dr. Amy conducted neurological studies and noted that the evaluation of the left peroneal motor response showed increased latency, decreased amplitude and decreased velocity. He noted a nonlocalizable lesion of the left peroneal nerve. Dr. Amy found that the needle study showed evidence of lesions of the right L5 and S1 roots, although he could not confirm the lesions were proximal. OWCP also received on December 16, 2014 a follow-up report from Darryl Markowitz, PA, which noted that the physician assistant would discuss appellant's case with Dr. Bassam, as surgical intervention would probably be warranted.

Appellant submitted a copy of a decision by the Social Security Administration dated February 27, 2015.

In an April 30, 2015 decision, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden 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.³

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. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁴ In order to meet his or her burden of proof to establish the fact that he or she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he or she actually experienced the employment injury or exposure at the time, place, and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The medical evidence required to

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

⁵ *Linda S. Jackson*, 49 ECAB 486 (1998).

⁶ *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.⁷

ANALYSIS

OWCP determined that appellant had established that the employment incident of June 1, 2011 occurred as alleged and that appellant had established medical conditions. However, it denied his claim as he had not established that the diagnosed medical conditions were causally related to the accepted employment incident.

The Board finds that appellant has not established a medical condition causally related to the accepted employment incident, and that therefore, he failed to meet his burden of proof.⁸ The Board notes that the opinions of Drs. Lotfi and Boden are insufficient to meet appellant's burden of proof as neither of these physicians provided an opinion on the cause of appellant's condition.⁹ Dr. Lotfi diagnosed appellant with sciatica, disc degeneration, and stenosis, but failed to discuss how these conditions were related to a June 1, 2011 employment incident. Dr. Boden noted moderate degenerative changes throughout appellant's lumbar spine and moderate spinal stenosis, but did not give any opinion on causal relationship. Likewise, the numerous diagnostic studies are of limited probative value as they do not address whether the June 1, 2011 employment incident caused any diagnosed conditions.¹⁰ Dr. Patronas interpreted the July 13, 2012 MRI scan, but did not discuss appellant's employment or the cause of any of his objective findings. Dr. Amy also conducted objective studies but failed to discuss any causal relationship between his findings and appellant's employment.

The only physician of record who provided a definite opinion on causal relationship was Dr. Bassam. Dr. Bassam opined that appellant's disc herniation, nerve compression and foot drop were the direct result of his employment injury of June 1, 2011. However, he did not provide a detailed description of the lifting incident of June 1, 2011. The Board also notes that the first medical report in the record from Dr. Bassam was dated January 15, 2014, over two years after the employment incident. Dr. Bassam provides very limited discussion with regard to the period between appellant's incident and Dr. Bassam's diagnosis. This is especially important in that there are no medical reports contemporaneous to appellant's alleged injury. Dr. Bassam failed to show the progression of appellant's injury from June 1, 2011 until he first saw him over two years later. An opinion from a physician on causal relationship is insufficient to establish the claim if it does not explain how the accepted incident caused or aggravated a diagnosed

⁷ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

⁸ *I.M.*, Docket No. 15-1318 (issued December 10, 2015).

⁹ *G.M.*, Docket No. 14-2057 (issued May 12, 2015).

¹⁰ *Id.*

condition.¹¹ Lacking thorough medical rationale on the issue of causal relationship, Dr. Bassam's opinion is of limited value and insufficient to establish that appellant sustained an employment-related injury in the performance of duty on June 1, 2011.¹²

The remaining evidence is also insufficient to establish causal relationship. Appellant submitted notes from a nurse, a physician assistant, and physical therapists. These reports do not constitute medical evidence under section 8101(2) of FECA because these healthcare providers are not considered physicians under FECA, and their reports and opinions do not constitute probative medical evidence to establish causal relationship.¹³ The Board also notes that the October 7, 2010 note by the nurse predates the June 1, 2011 employment incident.

On appeal, appellant submitted a copy of a decision by the Social Security Administration. The Board has held that entitlement to benefits under another statute does not establish entitlement to benefits under FECA. Thus, the Social Security Administration decision was irrelevant to the underlying issue. Appellant also submitted to OWCP evidence regarding the use of leave after the June 1, 2011 employment incident. However, to establish causal relationship, he must submit medical evidence establishing a relationship between his medical condition and his employment. Appellant's record of leave is not medical evidence. He refers to several doctors in his arguments that have not provided any medical opinion. Appellant's interpretation of what a physician had said is of no probative value.

Appellant argues that at the time he filed his claim, neither OWCP nor the employing establishment indicated that he must submit medical evidence in support of his claim. He also argued that he never received notice of the initial denial of his claim. However, the record indicates that on December 20, 2011 OWCP sent a letter to appellant at his last known address detailing the medical evidence that was necessary to establish his claim. Furthermore, the January 27, 2012 decision was also sent to his last known address.¹⁴ Accordingly, appellant's arguments on appeal are without merit.

An award of compensation may not be based on surmise, conjecture, speculation, or upon his or her own belief that there was a causal relationship between his or her condition and his or her employment.¹⁵ Causal relationship must be based on rationalized medical opinion evidence.¹⁶ A physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated his

¹¹ See *S.W.*, Docket No. 15-1538 (issued December 14, 2015).

¹² *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

¹³ 5 U.S.C. § 8101(2); see also *G.G.*, 58 ECAB 389 (2007); *Jerré R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

¹⁴ Absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is known as the mailbox rule. See *James A. Gray*, 54 ECAB 277 (2002). Appellant has not submitted evidence to rebut this presumption.

¹⁵ *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).

¹⁶ *M.E.*, Docket No. 14-1064 (issued September 29, 2014).

condition.¹⁷ As appellant did not submit a rationalized medical opinion supporting that his injuries were causally related to the accepted June 1, 2011 employment incident, he did not meet his burden of proof to establish an employment-related 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.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an employment-related injury on June 1, 2011.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 30, 2015 is affirmed.

Issued: February 18, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁷ *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 G.G.*, Docket No 15-234 (issued April 9, 2015).