

weighed approximately 50 pounds, to place it in the back of his pick-up truck, when he felt a pop on the right side of his lower back followed by excruciating pain. The employing establishment indicated that the injury occurred before work hours while appellant was preparing to travel.² The claim was treated as a minor injury with minimal, or no, time lost from work. The employing establishment did not controvert the claim and OWCP administratively approved limited medical expenses.

Approximately two years later, on May 8, 2013, OWCP received a claim for wage loss and leave buyback for the period April 25 through October 26, 2011. Appellant also filed a Form CA-7a and a Form CA-7b. OWCP reopened his claim as the merits had never been adjudicated.

In support of his claim, appellant submitted a December 2, 2011 magnetic resonance imaging (MRI) scan of the lumbar spine, and a December 19, 2012 Texas Workers' Compensation Work Status report. He also provided reports from Rafael Olacio, a physician assistant, dated October 15 and 29, 2012, and January 10, 2013. Appellant also offered reports from Jose Ortega, also a physician assistant, dated November 5 and 27, 2012, and reports dated December 19 and 28, 2012 from Hugo Saravia, a physician assistant.

In a May 23, 2013 letter, OWCP advised appellant that his claim was being formally adjudicated. It stated that the evidence received was insufficient to establish that he actually experienced the incident alleged to have caused injury and that the evidence was also insufficient to support that he was injured in the performance of duty. Appellant was given 30 days to submit a response to the questionnaire and to provide medical evidence in support of his claim, including a physician's opinion supported by a medical explanation which explained how the reported work incident had caused or aggravated the claimed injury.

Appellant provided a June 12, 2013 report from Mr. Ortega in which he found that appellant had been evaluated for a bulging lumbar disc. Mr. Ortega noted that lumbar discomfort and pain had been a chronic but intermittent problem until an acute exacerbation of pain had started five days previously, when appellant had been pushing a front gate at work.

By decision dated June 25, 2013, OWCP denied the claim finding that appellant had not provided a factual basis for his claim and, in addition, there was no medical evidence to establish that a diagnosed medical condition was causally related to the event of April 25, 2011.

On July 15, 2013 appellant requested reconsideration and submitted a July 15, 2013 statement, a completed questionnaire dated June 13, 2013, and a duplicate copy of his notice of injury claim (Form CA-1). He provided a July 2, 2011 Form CA-16 (authorization for examination and/or treatment) for an October 27, 2011 incident in which he had allegedly lifted a computer bag and aggravated his low back condition and an April 26, 2011 Form CA-16 for the April 25, 2011 incident of lifting a suitcase to place it in his pick-up truck.

² The record establishes that on that morning appellant was packing for work-related travel to Connecticut. OWCP determined that at the time of the alleged incident appellant was within the performance of duty.

In a July 15, 2009 form, Dr. Norma Cavazos Salas, an osteopath, wrote that she had first examined appellant on July 16, 2009 for low back pain. She diagnosed sciatica, lumbar strain and lower back pain. The treatment dates listed for appellant included April 25, 2011.

An undated medical report received by OWCP on June 27, 2013 and signed by Dr. Salas reported that appellant was seen on April 25, 2011 and that appellant reported lifting a suitcase when he felt a pop to the low back area. Appellant reported prior history of herniated disc and lumbar disc disease but with acute aggravation of his chronic pain. Dr. Salas noted appellant's complaints of increased pain with radiation to the right buttock, right anterior and posterior thigh and calf as well as stiffness to the low back and muscular spasm. No lumbar spine x-rays were taken. Appellant was noted to have tenderness to the lower lumbar spinal area with paraspinal muscle tenderness. He had full range of motion in his lumbar spine and was neurologically intact with the exception of a positive straight leg raise test on the right. The report offered a diagnosis of acute lumbar strain with sciatica and stated that appellant was treated conservatively with pain medication and physical therapy. Appellant improved clinically and was released to light duty on May 7, 2011. A December 2, 2011 MRI scan of the lumbar spine showed small central disc protrusion L4-5 and multilevel degenerative disc disease L2-3, L3-4 and L4-5.

Dr. Salas' report stated that an acute lumbar strain caused strain and tension in appellant's spine. Appellant's history of a herniated disc prevented his spine from absorbing the full impact of the strain/tension and that the supporting musculature sustained the full stress. His herniated disc accentuated his lumbar strain.

By decision dated September 19, 2013, OWCP modified its prior decision to reflect that the fact of injury had been established but denied the claim because causal relationship had not been established.

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 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

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. A fact of injury determination is based on two elements. 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.

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).

An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁵

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.⁶ 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 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.⁷ The weight of the 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.⁸ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁹

ANALYSIS

OWCP accepted that on April 25, 2011 appellant was in the performance of duty when he lifted his suitcase to put in the back of his pick-up truck. It denied his claim because he failed to submit sufficient medical evidence to establish that his diagnosed low back condition was caused or aggravated by this activity. The Board finds that OWCP properly denied the claim as the medical evidence fails to establish that his back injury was caused by the accepted employment incident on April 25, 2011.¹⁰

In the undated medical narrative, Dr. Salas provides a history similar to that provided by appellant of the April 25, 2011 incident, noting that appellant was lifting a suitcase when he felt a pop to the low back area. The report indicates that appellant was seen that day approximately three to four hours after the incident. The report notes symptoms and provides examination findings of lumbar tenderness, paraspinal muscle tenderness, and a positive straight leg raise test on the right. The report diagnosed acute lumbar strain with sciatica which occurred because of a strain and tension on appellant's lower back. The report finds that a herniated disc prevented appellant's spine from absorbing the full impact of the strain, causing the supporting musculature of the low back to sustain the full impact of the lifting of the suitcase.

The report of Dr. Salas is unpersuasive for several reasons. First, although the report is undated, it was first received by OWCP June 27, 2013. This is two years after appellant's

⁵ See *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

⁶ See *J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

⁷ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *James Mack*, 43 ECAB 321, 329 (1991).

⁹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ The Board notes that the only relevant evidence pertaining to the April 25, 2011 injury is the undated medical narrative from Dr. Salas.

April 25, 2011 incident. The report contains no explanation for this two-year delay, nor does it discuss the intervening events between 2011 and 2013. It is necessary to bridge gaps in the medical record, where possible.¹¹ Secondly, the report contains no affirmative statement by Dr. Salas that she examined appellant on April 25, 2011. The report is phrased entirely in the passive voice without reference to an actual examination. There is no indication of a review of appellant's extensive history as a part of the process of rendering an opinion on causal connection. As such the Board finds that the undated report, standing alone, is insufficient to meet appellant's burden of proof.¹²

Further, the report of Dr. Salas lacks probative value as it does not discuss appellant's extensive history of back problems which pre-date the April 25, 2011 incident. The facts disclose that appellant had a bulging disc and a history of chronic intermittent back pain extending back to 2009. Dr. Salas reports that she had treated appellant since that year yet the record contains no significant information about appellant's preexisting condition. Thus the opinion of Dr. Salas is not sufficiently rationalized or reflective of a full medical review.¹³

Finally, undated, or misdated medical records themselves may be of diminished probative value for that reason. When a medical report is undated, it becomes difficult to assess its age or its reliability and to weigh its value against that of other evidence.¹⁴ The Board has disfavored medical reports which carry a recent date, but which are based on examinations and record reviews performed years earlier.¹⁵

The record contains a Form CA-16 dated April 26, 2011. If 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, the CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.¹⁶ The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form. Upon return of the case record to OWCP, it should further evaluate this aspect of the case.

¹¹ *Joel Randolph*, 8 ECAB 213 (1955).

¹² *Supra* note 8.

¹³ *See Donald P. Lass*, 31 ECAB 1806 (1980).

¹⁴ *S.I.*, Docket No. 15-374 (issued April 6, 2015).

¹⁵ *L.T.*, Docket No. 13-997 (issued June 10, 2014).

¹⁶ *See Tracy P. Spillane*, 54 ECAB 608 (2003).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his diagnosed back condition was causally related to the accepted April 25, 2011 injury.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2013 decision of the Office of Workers' Compensation Programs is affirmed.¹⁷

Issued: January 6, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁷ James A. Haynes, Alternate Judge participated in the original decision but was no longer a member of the Board effective November 16, 2015.