

**United States Department of Labor  
Employees' Compensation Appeals Board**

C.S., Appellant	)	
	)	
and	)	<b>Docket No. 15-1829</b>
	)	<b>Issued: January 28, 2016</b>
<b>DEPARTMENT OF THE ARMY, ARMY</b>	)	
<b>MEDICAL COMMAND, Fort Hood, TX,</b>	)	
<b>Employer</b>	)	
	)	

*Appearances:*  
Tim Egbuchunam, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 9, 2015 appellant, through counsel, filed a timely appeal from a June 18, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup>

---

<sup>1</sup> The Board notes that during the pendency of this appeal, OWCP issued a September 25, 2015 decision affirming the denial of appellant's traumatic injury claim. This decision, however, is null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue. As the Board had jurisdiction over the traumatic injury claim, OWCP may not issue a decision regarding the same issue on appeal before the Board. See *Terry L. Smith*, 51 ECAB 182 (1999); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990), 20 C.F.R. § 501.2(c)(3).

Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUE**

The issue is whether appellant met her burden of proof to establish that her left thigh contusion and back strain were causally related to the accepted March 12, 2012 employment incident.

### **FACTUAL HISTORY**

On April 6, 2012 appellant, then a 55-year-old cook, filed a traumatic injury claim (Form CA-1) alleging that on March 12, 2012 she strained her back and sustained a left thigh contusion when a coworker assaulted her at work. She stopped work on March 21, 2012 and has not returned. Appellant explained that on March 12, 2012 she was prepping breakfast at her work area when S.J., a coworker, approached her and asked to take a food preparation cart. She told S.J., that she was using the cart, but that there was another cart in the soda room. Appellant stated that S.J. pushed the cart towards her and became angry. She related that S.J. walked away but came back to appellant's workstation. S.J. walked behind appellant and pushed her in her back. Appellant noted that she fell into the table and asked S.J. why she pushed her. They continued to exchange words until Bravie Powell, appellant's supervisor, stepped between them. Appellant reported that S.J. reached around Mr. Powell and hit her with a closed fist.

On the back of the claim form, Mr. Powell reported that he did not see appellant get hit with an elbow or see her fall on any table. He disputed appellant's continuation of pay on the basis of willful misconduct.

In a March 13, 2012 letter, Kevin Gilchrist, a staff sergeant (SSG) at the employing establishment, controverted appellant's claim. He stated that on March 12, 2012 at approximately 11:00 a.m. he spoke with appellant in his office and observed that she was visibly upset after being assaulted. Appellant related that she was prepping for breakfast when S.J., a coworker, approached her to ask if she was using both carts. She informed S.J. about where she could find an available cart. S.J. walked away but returned to retrieve an item. Appellant alleged that S.J. violently bumped into her, knocking her off balance. She followed S.J. back to her workplace and demanded an apology but did not get one. S.J. returned to appellant's workstation and bumped her again. Both appellant and S.J. began to exchange words until Mr. Powell separated them. Mr. Powell advised appellant to report to the administrator's area where she spoke with Mr. Gilchrist. Appellant gave a statement to a security officer who notified military police.

---

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that appellant submitted additional evidence following the June 18, 2015 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

The employing establishment provided a March 12, 2012 investigative report by Michael S. Morales-Ramos, a military policeman, regarding the March 12, 2012 incident. Mr. Morales-Ramos reported that they spoke with appellant and S.J. and obtained various witness statements from other coworkers. He explained that based on their investigation it appeared that S.J. and appellant began their altercation due to a misunderstanding of who would use a certain food preparation cart. Appellant and S.J. began to argue when appellant accused S.J. of bumping into her. They continued to yell at each other when appellant gave S.J. a “chest bump” and S.J. pushed appellant back. Their coworkers were able to separate them, but appellant continued to try to hit S.J.

The investigative report contained witness statements from coworkers, which confirmed that appellant and S.J. got into a verbal and physical altercation at work on March 12, 2012. Mr. Powell also stated that, after he separated appellant and S.J., appellant was still trying to get to S.J.

In a March 14, 2012 military police report, which included statements from S.J. and appellant, S.J. related that on March 12, 2012 she asked appellant if she needed both food preparation carts. Appellant said no, but when S.J. tried to take one of the carts appellant stated that it was her cart. S.J. pushed the cart back against the wall. She related that when she walked away, appellant followed her yelling at her about throwing the cart against the wall. S.J. returned back to completing her work, but had to return past appellant’s workstation to get to the supply room. She noted that when she passed appellant, she said excuse me. S.J. stated that after she returned to her workstation appellant followed her and yelled at her not to push or touch her. S.J. related that appellant grabbed her arm, so she pushed her hand away. She and appellant began to push each other until Mr. Powell separated them.

In a letter dated April 11, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she respond to an attached questionnaire in order to establish fact of injury and to provide medical evidence which demonstrated that she sustained a diagnosed condition as a result of the March 12, 2012 incident.

On May 2, 2012 appellant responded to OWCP’s development letter. She explained that, at the time the injury occurred, she was performing the duties in her kitchen when S.J. pushed her in her back and caused her to fall into the table. Appellant included a witness statement from Larry Johnson, a coworker, regarding the March 12, 2012 employment incident. She reported that when the injury occurred she immediately felt a persistent deep aching pain in the lower back which worsened with standing and walking. Appellant noted that she did not sustain any other injuries, either on or off duty, between the date of injury and the date it was first reported. She indicated that she was first examined on March 21, 2012 by Dr. Les Benson, Board-certified in emergency medicine. Appellant reported that she sustained a back sprain on January 23, 2009 and reinjured her back on September 27, 2011 at work.

Appellant was treated in the employing establishment health unit on March 12, 2012 by Dr. Jonathan E. Wiese, Board-certified in emergency medicine. Dr. Wiese diagnosed back strain and thigh contusion and recommended that appellant make an appointment with her treating physician in two or three days.

In a March 21, 2012 attending physician's report, Dr. Benson noted that on March 12, 2012 appellant was assaulted at work and struck in the back and neck. He diagnosed back strain and concussion, and reported that appellant was partially disabled from March 17 to May 5, 2012. In April 5 and May 2, 2012 reports, Dr. Benson related that appellant was injured by a coworker at work who shoved appellant from behind then struck her in the face. He diagnosed back strain, cervical strain, hip and thigh contusion, and face contusion. Dr. Benson opined that the injuries appellant suffered were due to the physical attack on March 12, 2012. He also reported that appellant was later arrested and suffered anxiety and depression. Dr. Benson indicated that appellant was physically and mentally unable to return to work until approximately May 4, 2012.

On April 2, 2012 appellant underwent a computerized tomography (CT) scan of the face by Dr. William Lewis Dobie, Jr. a Board-certified diagnostic radiologist, who observed no gross mucosal thickening and intact nasal bone, arches, and mandible.

Appellant submitted diagnostic reports relating to her previous back injuries. In a February 16, 2009 magnetic resonance imaging (MRI) scan report of the lumbar spine, Dr. Gordon Witwer, a Board-certified diagnostic radiologist specializing in neuroradiology and vascular and interventional radiology, observed shallow central and right paramedian disc bulge and mild degenerative facet arthropathy. An October 3, 2011 MRI scan of the lumbar spine by Dr. Daniel Kirzeder, a Board-certified diagnostic radiologist, revealed posterior disc bulge at T12-L1 and mild degenerative changes at the remaining lumbar levels.

In a decision dated May 16, 2012, OWCP denied appellant's claim on the basis of performance of duty.

On September 13, 2012 OWCP received appellant's request for reconsideration. Appellant stated that the evidence on file did not support the truth and alleged that she sustained an injury on the job when a coworker attacked her. She requested that OWCP remove all reference to her separation for misconduct because the employing establishment cancelled the action effective May 11, 2012. Appellant also asked for restoration of her back pay since she was still off work due to the March 12, 2012 physical attack.

In a May 28, 2012 report, Dr. Robert B. Mandell, a clinical psychologist, indicated that appellant had two previous back injuries. One injury occurred on January 23, 2009 when a crash cart hit her and the second injury occurred on September 27, 2011 when appellant stepped into a hole. Dr. Mandell related that on March 12, 2012 appellant was physically attacked on the job by a coworker. He noted that she was taken to the emergency room and had not returned to work. Dr. Mandell described appellant's history and provided findings based on psychological testing. He diagnosed adjustment disorder with mixed anxiety and depressed mood, post-traumatic stress disorder, and lumbar sprain. Dr. Mandell opined that appellant was experiencing depression, anxiety, and chronic pain due to on the job injuries.

By decision dated November 16, 2012, OWCP affirmed the May 16, 2012 decision with modification. It accepted that the March 12, 2012 incident occurred in the performance of duty, but denied the claim finding insufficient evidence to establish that her medical condition was causally related to the accepted incident.

On October 1, 2013 OWCP received appellant's request for reconsideration. Appellant noted that OWCP was now denying her claim due to lack of medical evidence and alleged that the medical evidence that was sent supported causal relationship.

Appellant submitted a report dated February 9, 2010 by Dr. Benson. Dr. Benson related that on March 12, 2012 appellant was injured by a coworker who attacked her at work. He described that appellant was shoved from behind and struck in the face. Dr. Benson noted that appellant was later arrested and suffered acute anxiety. He diagnosed back strain, cervical strain, hip and thigh contusion, and face contusion. Dr. Benson opined that appellant's injuries were due to the physical attack and subsequent arrest on March 12, 2012. He reported that appellant was totally disabled from performing her work duties.

By decision dated December 19, 2013, OWCP denied modification of the November 16, 2012 denial decision on the basis of insufficient medical evidence to establish causal relationship.

On January 7, 2014 OWCP received appellant's reconsideration request. Appellant requested that OWCP reconsider her claim based on her statement and a notarized witness statement concerning the March 12, 2012 attack. She resubmitted S.J.'s March 16, 2012 statement, which now included a notary stamp and signature, and Dr. Benson's February 9, 2010 report.

Appellant submitted progress notes dated April 8, 2013 to January 31, 2014 by Allan Roff, a physician assistant. Mr. Roff reviewed her history and diagnosed depressive disorder and chronic post-traumatic stress disorder. He related that in March 2012 appellant was hit on the side of her head by a coworker at work. Appellant developed a reactive depression and continued to experience frequent nightmares and flashbacks of the assault. In the April 8, 2013 report, Mr. Roff indicated that she was initially diagnosed with adjustment disorder but now her depressive symptoms had deepened in the past year. He explained that appellant was significantly incapacitated by the assault.

By decision dated February 19, 2014, OWCP denied modification of the December 19, 2013 decision, finding insufficient medical evidence to establish causal relationship.

On March 7, 2014 OWCP received appellant's reconsideration request. Appellant alleged that her treating physician would be submitting his rationalized opinion on causal relationship. No additional medical evidence was received.

In a decision dated April 15, 2014, OWCP denied modification of the February 19, 2014 denial decision, again finding insufficient medical evidence to establish causal relationship.

On May 13, 2014 OWCP received appellant's request for reconsideration. Appellant again alleged that the medical evidence submitted established her claim.

In an April 16, 2014 note, Rebecca Doris Wistrom, a certified physician assistant, related appellant's complaints of left leg pain. She recommended a CT scan of the thigh to see what the mass was.

On April 24, 2014 appellant underwent a CT scan of her left lower extremity by Dr. Linda Parman, a Board-certified diagnostic radiologist, who observed intramuscular lipomatous lesion of the left rectus femoris with no additional masses or osseous abnormalities. Muscle bulk and attenuation appeared normal. Appellant submitted April 24 and May 6, 2014 CT scans of the left lower extremity. It showed an intramuscular lipomatous lesion of left rectus femoris.

Appellant provided a May 6, 2014 surgical consultation with Dr. Robert Owens Carpenter, a Board-certified surgeon, who provided instructions on the recommended treatments for a lipoma. She also submitted May 27, 2014 surgical pathology examination and June 13, 2014 postoperative examination reports with Dr. Russell Alan Ward, a Board-certified orthopedic surgeon, who noted a diagnosis of left thigh soft tissue mass.

In a decision dated January 28, 2015, OWCP denied modification of the April 15, 2014 denial decision on the basis of insufficient medical evidence to establish causal relationship.

On February 25, 2015 OWCP received appellant's reconsideration request. Appellant stated that she consulted her physician and he informed her that he would be forwarding the opinion on causal relationship to OWCP. No additional medical evidence was received.

By decision dated March 6, 2015, OWCP denied further merit review finding that appellant did not submit any new and relevant evidence nor raise a substantive legal question.

On March 20, 2015 OWCP received another reconsideration request of the January 28, 2015 OWCP decision.

In support thereof, appellant submitted a March 9, 2015 report by Dr. Benson. He related that appellant worked at the employing establishment as a cook and described her duties as cutting, chopping, peeling, mopping, cleaning the grill, and cooking. Dr. Benson noted a date of injury of March 12, 2012 and explained that appellant was attacked and assaulted by another coworker when the coworker wanted to take appellant's food preparation cart. He reported that the coworker pushed the cart towards appellant and it hit her left thigh. Dr. Benson noted that the coworker continued to argue and point her finger to appellant's face. When another employee stepped in between them, the coworker reached over and punched appellant in the face. Appellant complained of pain to her head, low back, left leg, and left thigh. Dr. Benson opined that appellant's injuries were a direct result of an attack that she suffered while on duty at work. He reported that due to the direct cause of being hit in the left thigh with the cart, the injury that appellant sustained developed into an Intramuscular Lipoma (mass), which had to be surgically removed.

By decision dated June 18, 2015, OWCP denied modification of the January 28, 2015 decision finding the evidence insufficient to establish that her condition was caused by factors of her federal employment.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>5</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>6</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.<sup>7</sup> There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.<sup>8</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup> An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.<sup>10</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

---

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>6</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>8</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>9</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>10</sup> *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>11</sup> *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>12</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>13</sup> *James Mack*, 43 ECAB 321 (1991).

## ANALYSIS

Appellant alleged that on March 12, 2012 she sustained a back strain and left thigh contusion as a result of an assault by a coworker at work. She stopped work and did not return. OWCP accepted that the employment incident occurred as alleged and that appellant was diagnosed with back strain and left thigh contusion, but denied her claim finding insufficient medical evidence to establish that her medical conditions resulted from the accepted incident. The Board finds that appellant has not met her burden of proof to establish that her left thigh and back conditions were causally related to the March 12, 2012 employment incident.

Appellant received medical treatment from Dr. Benson. In March 21 to May 2, 2012 reports, Dr. Benson described that appellant was shoved and then struck in the face by a coworker at work. He diagnosed back strain, cervical strain, hip and thigh contusion, and face contusion. Dr. Benson opined that appellant's injuries were due to the physical attack on March 12, 2012. He also reported that appellant was later arrested and sustained anxiety and depression. Dr. Benson indicated that appellant was disabled from work until May 5, 2012. In a March 9, 2015 report, he noted that on March 12, 2012 a coworker pushed a cart towards appellant which hit her left thigh. When another worker tried to separate the two individuals, the coworker reached around and hit appellant's face. Dr. Benson opined that appellant's injuries were a direct result of an attack that appellant suffered while on duty at work. He further explained that, due to the direct cause of being hit in the left thigh with the cart, appellant sustained an intramuscular lipoma that had to be surgically removed.

The Board has found that medical reports must be based on a complete and accurate factual and medical background.<sup>14</sup> In this case, Dr. Benson attributed appellant's left thigh condition to being hit by a cart at work. The Board notes, however, that in none of appellant's statements did she describe being struck in the left thigh by a cart at work. Appellant only reported that a coworker shoved her in the back causing her to fall on the table and that the coworker struck her in the face. Accordingly, the Board finds that Dr. Benson's opinion on causal relationship regarding the left thigh condition is not based on an accurate history and is of limited probative value. In addition, Dr. Benson does not provide any medical explanation as to how the March 12, 2012 employment incident caused or aggravated appellant's alleged back strain. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>15</sup> For these reasons, the Board finds that appellant's opinion on causal relationship is of limited probative value to establish appellant's claim.

Appellant was also treated by Dr. Mandell. In a May 28, 2012 report, Dr. Mandell reviewed appellant's history and related that on March 12, 2012 she was physically attacked on the job by a coworker. He diagnosed adjustment disorder with mixed anxiety and depressed mood, post-traumatic stress disorder, and lumbar sprain. Dr. Mandell opined that appellant was experiencing depression, anxiety, and chronic pain due to on the job injuries. Although he

---

<sup>14</sup> *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>15</sup> *T.M.*, Docket No. 08-975 (issued February 6, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

provides an opinion on causal relationship, he does not provide any medical rationale to support his conclusion. As previously noted, a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>16</sup> A medical explanation is especially important in this case because the record reflects that appellant sustained two previous back injuries. Dr. Mandell failed to explain, based on medical rationale, how appellant's current back condition resulted from the March 12, 2012 employment incident and not her preexisting back condition.<sup>17</sup> His report, therefore, is insufficient to establish appellant's claim.

The diagnostic reports appellant submitted are likewise insufficient to establish appellant's claim. The February 16, 2009 MRI scan report by Dr. Witwer and the October 3, 2011 MRI scan report by Dr. Kirzeder reference appellant's previous back conditions and do not describe appellant's current medical conditions. Furthermore, while they diagnose degenerative changes and disc bulge of appellant's lumbar spine, neither doctor provides any opinion on the cause of appellant's lumbar condition. Similarly, the April 2, 2012 CT scan report by Dr. Dobie and the April 24, 2014 CT scan report by Dr. Parman also fail to provide any opinion on the cause of appellant's lumbar or left lower extremity conditions. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>18</sup> Therefore, these diagnostic reports also fail to establish causal relationship.

Appellant also received medical treatment from Mr. Roff, a physician assistant, for psychological condition and from Ms. Wistrom, also a physician assistant. Section 8102(2) of FECA, however, provides that 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. As physician assistants are not considered "physicians" as defined by FECA, their medical opinions regarding diagnosis and causal relationship are of no probative medical value.<sup>19</sup>

Causal relationship is a medical question that must be established by probative medical opinion from a physician.<sup>20</sup> Despite appellant's allegations that the medical evidence on record has established that her lumbar and left thigh conditions were causally related to the March 12, 2012 employment incident, the Board finds that none of the medical reports submitted constitute rationalized medical evidence of a causal relation, based upon a specific and accurate history of employment conditions, which are alleged to have caused or exacerbated a disabling condition.<sup>21</sup> Accordingly, the Board finds that appellant failed to meet her burden of proof.

---

<sup>16</sup> *Id.*

<sup>17</sup> *See B.T.*, Docket No. 13-138 (issued March 20, 2013).

<sup>18</sup> *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

<sup>19</sup> 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>20</sup> *W.W.*, Docket No. 09-1619 (issued June 2010); *David Apgar*, *supra* note 9.

<sup>21</sup> *Patricia J. Bolleter*, 40 ECAB 373 (1988).

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 her burden of proof to establish that her back strain and left thigh contusion were causally related to the March 12, 2012 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 28, 2016  
Washington, DC

Patricia H. Fitzgerald, Deputy 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