



On appeal appellant contends that he has a previously accepted claim under OWCP File No. xxxxxx681 for which he is still being treated, but was instructed by OWCP to file a new claim which was improperly denied.<sup>3</sup>

### **FACTUAL HISTORY**

On August 19, 2014 appellant, a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1), alleging a lower back injury on January 28, 2014 due to a slip and fall while delivering a package. He submitted a February 4, 2014 work excuse note for January 30 and 31, 2014 due to his back pain from a nurse practitioner.

In a September 2, 2014 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a variety of medical reports that predated the January 28, 2014 work incident. In an August 22, 2011 operative report, Dr. Mark Kerner, a Board-certified orthopedic surgeon, performed a right L5-S1 hemilaminectomy, medial disc herniation, and discectomy. Other reports from Dr. Kerner and his associates documented treatment of a back condition since 2010. On November 2, 2010 Dr. Kerner diagnosed a right lumbar disc herniation at L4-5. He asserted that appellant had no specific injury, but felt that repetitive activities as a mail carrier led to his back and leg pain issues. On February 26, 2013 Dr. Kerner found that appellant had reached maximum medical improvement and released him to work without restrictions.

Likewise reports from September 1, 2010 through November 26, 2012 by Dr. Reeta Arora, a Board-certified physiatrist and associate of Dr. Kerner, diagnosed a right disc herniation at L5-S1 with significant radicular symptoms. On October 29, 2010 Dr. Arora diagnosed right L5-S1 radiculopathy secondary to a disc protrusion at L5-S1 with a superimposed right-sided disc herniation. She opined that appellant's duties of routinely bending, twisting, and lifting caused his August 9, 2010 injury and ongoing symptomatology. Included with these documents were reports of diagnostic testing from 2010 to 2012. Appellant also submitted reports from a nurse practitioner.

An x-ray of the lumbar spine dated February 4, 2014 demonstrated degenerative changes most marked at L5-S1. An April 16, 2014 magnetic resonance imaging (MRI) scan of the lumbar spine revealed a previous right L5-S1 hemilaminectomy and disc surgery.

In a September 9, 2014 report, Dr. Kerner asserted that appellant had a previous compensable disc injury at L5-S1 and subsequently sustained a recurrent disc herniation at L5-S1. He explained that there may have been some misunderstanding given the lumbarization of appellant's sacral spine as his levels had been marked differently in different studies, but nonetheless he had a disc herniation from a work injury and now had a recurrence of the same disc. Dr. Kerner advised that appellant required surgery for his pain and dysfunction and opined that this recurrent disc herniation was causally related to his original employment injury and subsequent surgery.

---

<sup>3</sup> The instant appeal only addresses whether the January 28, 2014 employment incident caused or aggravated a low back condition. Matters pertaining to the prior claim are not before the Board on the present appeal.

By decision dated February 6, 2015, OWCP denied appellant's claim finding the medical evidence insufficient to establish a causal relationship between his lower back condition and the January 28, 2014 employment incident.

On February 10, 2015 appellant requested reconsideration and submitted a February 10, 2015 report from Dr. Kerner who reiterated his opinion that appellant's lower back condition was a recurrence of a previously accepted employment injury and required a revision surgery at the same L5-S1 level.

By decision dated May 21, 2015, OWCP denied modification of its prior decision.

### **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 timely filed within the applicable time limitation period of FECA, that an injury<sup>4</sup> was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup>

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. 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.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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>7</sup>

---

<sup>4</sup> OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

<sup>5</sup> See *T.H.*, 59 ECAB 388 (2008).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

## ANALYSIS

OWCP has accepted that the employment incident of January 28, 2014 occurred at the time, place, and in the manner alleged. The issue is whether appellant's lower back conditions resulted from the January 28, 2014 employment incident. The Board finds that appellant has not submitted sufficient medical evidence to establish that the January 28, 2014 work incident caused or aggravated his claimed back condition.

The record contains various reports from Dr. Kerner. In a post injury September 9, 2014 report, Dr. Kerner asserted that appellant had a previous compensable disc injury at L5-S1 and subsequently sustained a recurrent disc herniation at L5-S1. He explained that appellant had a disc herniation from a work injury and now had a recurrence of the same disc. Dr. Kerner advised that appellant required surgery for his unremitting pain and dysfunction and opined that this recurrent disc herniation was causally related to his original employment injury and subsequent surgery. On February 10, 2015 he reiterated that appellant's lower back condition was a recurrence of a previously accepted work injury and required a revision surgery at the same level. These reports are of limited probative value as neither of these reports addresses how the January 28, 2014 work incident caused or contributed to the diagnosed back condition.<sup>8</sup> Matters relating to appellant's prior injury are not before the Board on the present appeal. Other reports from Dr. Kerner predate the January 28, 2014 claimed injury and thus are not probative as to a work injury on January 28, 2014.

Other medical evidence provided by appellant is of limited probative value as it either predates the claimed January 28, 2014 injury or does not address how that work incident caused or aggravated a diagnosed medical condition.<sup>9</sup>

Furthermore, the reports from nurse practitioners are not competent medical evidence because a nurse practitioner is not physician as defined under FECA.<sup>10</sup> As noted, causal relationship is a medical issue that must be addressed by medical evidence.<sup>11</sup> This evidence is of no probative medical value.

On appeal appellant contends that he has a previously accepted claim under OWCP File No. xxxxxx681 for which he is still being treated, but was instructed by OWCP to file a new claim which was improperly denied. The Board finds that OWCP properly adjudicated appellant's claim as the facts establish a new intervening traumatic incident, the fall at work. As appellant has not submitted any rationalized medical evidence to support his allegation that he

---

<sup>8</sup> See *Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

<sup>9</sup> See *J.S.*, Docket No. 07-0633 (issued June 8, 2007) (medical evidence not sufficient to meet the claimant's burden of proof where such evidence either predated the claimed injury or did not offer an opinion on causal relationship).

<sup>10</sup> 5 U.S.C. § 8101(2). See *Paul Foster*, 56 ECAB 208, 212 n.12 (2004). See *Sean O'Connell*, 56 ECAB 195 (2004) (reports by nurse practitioners and physician assistants are not considered medical evidence as these persons are not considered physicians under FECA).

<sup>11</sup> See *supra* note 7.

sustained an injury causally related to a January 28, 2014 fall, he has failed to meet his burden of proof to establish a claim for compensation.

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 has not met his burden of proof to establish a lower back condition causally related to a January 28, 2014 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 21 and February 6, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 7, 2016  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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