



## **FACTUAL HISTORY**

On November 8, 2011 appellant, then a 38-year-old letter carrier, filed a recurrence of disability claim (Form CA-2a). She related that her original injury to her back and neck occurred on October 30, 2010, but on November 8, 2011 she felt pain in her back and neck, and shortness of breath while loading a package into her truck. Appellant stopped work on November 8, 2011. The employing establishment controverted the claim. It related that she was found fit for duty after her prior injury and that she had returned to work on October 21, 2011. The employing establishment alleged that appellant had complained of back pain prior to loading the vehicle.

By letter dated February 1, 2012, OWCP advised appellant that it was treating her recurrence claim as a traumatic injury claim.<sup>2</sup> It allotted her 30 days to submit additional factual and medical evidence. Appellant did not submit medical evidence or any other documentation with her claim.

By decision dated March 2, 2012, OWCP denied appellant's claim as she had not established fact of injury. It explained that she did not establish that the November 8, 2011 incident occurred as alleged.

On March 12, 2012 appellant requested reconsideration. In support of her request for reconsideration, appellant submitted multiple medical reports from her treating Board-certified orthopedic surgeon, Dr. David B. Basch. In a March 6, 2012 report, Dr. Basch noted that appellant had recently sustained a work injury which occurred on October 30, 2010. He noted that appellant attempted to return to work in October 2011, but that in the process of loading a truck she became symptomatic. Dr. Basch diagnosed chronic cervical strain with disc bulging at C4-C5, C5-C6, and C6-C7 with indentation on the spinal cord, rule out right-sided radiculopathy. He also found chronic lumbar strain with internal disc disruption at L4-L5 with facet joint arthropathy. Dr. Basch noted that appellant remained disabled. Appellant also submitted reports by Dr. Basch dated April 3 through May 7, 2012. In these reports, Dr. Basch reiterated appellant's diagnoses, and stated that appellant needed a magnetic resonance imaging (MRI) scan.

In a June 13, 2012 decision, OWCP found that the evidence was insufficient to establish that an employment incident occurred on November 18, 2011. Accordingly, it denied modification of the prior decision.

In a May 29, 2012 report, Dr. Basch reiterated appellant's diagnoses and restrictions. He stated that it remained his medical opinion that appellant's symptoms and injuries were directly and causally related to her work injury of October 30, 2010. Dr. Basch noted that appellant was under a pain management program with a home exercise program and medication, and that she should continue with her work restrictions, which limited her to sedentary work. In a June 26, 2012 report, he noted that he saw appellant on that date and that she was in moderate distress.

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<sup>2</sup> 20 C.F.R. § 10.5(15), (16) defines a traumatic injury as a wound or other injury caused by a specific event or incident within a single workday or shift, whereas an occupational injury is defined as a condition produced in the work environment over a period longer than a single workday or shift.

Dr. Basch reiterated appellant's diagnoses and restrictions, and indicated that she had failed conservative treatment.

In a July 18, 2013 decision, OWCP determined that the factual component of fact of injury had been established, but found that the medical evidence was deficient.

Appellant continued to submit reports from Dr. Basch. In reports dated August 27, 2013 and January 14, 2014, Dr. Basch opined that appellant's diagnoses were causally related to the work injury of November 8, 2011. He also noted that appellant's prognosis remained guarded and that she continued to experience significant residual sequelae following the work injury of November 8, 2011.

On February 14, 2014 appellant, through counsel, requested reconsideration.

In support of her reconsideration request, appellant submitted additional reports from Dr. Basch. In a February 11, 2014 report, Dr. Basch noted that appellant was seen on November 15, 2011 for a November 8, 2011 injury. He indicated that appellant reported at that time that she was attempting to move a package while loading her mail delivery truck and felt a sharp severe pain in her low back. Dr. Basch noted that appellant would continue with her home exercise program and return to sedentary work. In a March 11, 2014 report, he noted that it remained his opinion that appellant's conditions were directly caused by the employment incident of November 8, 2011. Dr. Basch noted that appellant had a long history of conservative care but remained symptomatic. He stated that appellant remained completely disabled and was unable to return to work in any capacity.

In a May 1, 2014 decision, OWCP denied modification of its prior decisions. It noted that, although the evidence of the file was sufficient to establish a diagnosed condition, causal relationship had not been established.

Appellant continued to submit progress reports from Dr. Basch. In a May 27, 2014 report, Dr. Basch repeated appellant's diagnoses and also reiterated that appellant's symptoms and injuries were directly and causally related to the work injury which occurred on November 8, 2011. He noted that appellant had failed a long course of conservative care as well as interventional pain management and injections, and he noted that appellant had been made aware of further treatment options including surgical intervention.

In his June 24, 2014 report, Dr. Basch again concluded that appellant's symptoms and conditions were directly caused by the work injury of November 8, 2011. He added that appellant remained disabled and was unable to work in any capacity.

On August 18, 2014 Dr. Basch related that he reviewed his medical records regarding appellant's November 8, 2011 injury. He noted that appellant was working at the employing establishment loading parcels into her vehicle. Dr. Basch noted that appellant stated that, to perform this activity, he had to bend her back repeatedly in an awkward position, reach over and bend down into a hamper, lift parcels, and twist around to put the packages in the vehicle. He further noted that appellant had previous injuries to her back and neck related to a work injury of October 30, 2010. Dr. Basch opined that this mechanism of injury of using improper back mechanics on November 8, 2011 caused significant exacerbation/aggravation of her cervical and

lumbar conditions. He noted that the diagnoses he noted in his office notes remained unchanged. Dr. Basch concluded that appellant's current diagnoses were causally related to the injury of November 8, 2011. He noted that, although MRI scan evaluation of the lumbar spine was ordered in 2013, it had not been performed.

By letter dated October 6, 2014, appellant, through counsel, requested reconsideration. She continued to submit reports by Dr. Basch indicating that appellant remained disabled due to the previously diagnosed conditions.

By decision dated February 20, 2015, OWCP denied modification of the May 1, 2014 decision. It found that the medical evidence of record was not sufficiently rationalized to establish causal relationship.

By letter dated July 1, 2015, appellant, through counsel, requested reconsideration. In support thereof, he submitted a March 17, 2015 report wherein Dr. Basch stated that he had requested an MRI scan evaluation of appellant's lumbar spine following her work injury of November 8, 2011 on multiple occasions, including on May 7 and July 30, 2013, but that these requests had been ignored. Counsel reiterated that appellant's diagnoses were: (1) chronic cervical strain with disc bulging at C4-C5, C5-C6, and C6-C7 with compression upon the spinal cord with bilateral radiculitis and neurological involvement; and (2) chronic lumbar strain with internal disc disruption at L4-L5 with facet arthropathy, rule out adjacent level disease with recurrent disc herniation. He concluded that appellant's conditions were causally related to her November 8, 2011 employment incident as she was able to complete her essential job duties and deal with chronic lumbar strain until the injury of November 8, 2011. Counsel noted that this incident caused an exacerbation of her conditions due to improper back mechanics when she was forced to load her work truck in an awkward position, which caused her severe pain including radiculitis. He opined that appellant still required an updated MRI scan evaluation of her lumbar spine, and has been instructed to proceed with left laminectomy and discectomy at L4-L5. Counsel stated that appellant was disabled and unable to return to work in any capacity.

By decision dated August 31, 2015, OWCP denied modification of its prior decision. It found that the evidence of record did not substantiate causal relationship.

### **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 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.<sup>3</sup>

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<sup>3</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

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 or exposure, which is alleged to have occurred.<sup>4</sup> 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.<sup>5</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>6</sup> The medical evidence required to 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.<sup>7</sup>

### ANALYSIS

Appellant alleged that she sustained an employment-related injury on November 8, 2011 while loading a package onto her vehicle. OWCP determined that the employment incident occurred as alleged. Based on the medical reports of Dr. Basch, appellant's treating orthopedic surgeon, appellant established medical diagnoses of chronic cervical strain with disc bulging at C4-C5, C5-C6, and C6-C7 with indentation on the spinal cord and chronic lumbar strain with internal disc disruption at L4-L5 with facet joint arthropathy. However, OWCP denied appellant's claim as it found that she had failed to establish causal relationship between the accepted employment incident and the medical diagnoses.

In support, appellant and her counsel submitted medical reports from Dr. Basch. In multiple medical reports, Dr. Basch opined that appellant's diagnoses were causally related to her employment injury of November 8, 2011. He noted appellant's assertion that she hurt herself while loading her mail delivery truck and felt a sharp severe pain in her lower back. In a June 24, 2014 report, appellant recounted to Dr. Basch that she had to bend her back repeatedly in an awkward position, and had to reach over and bend down into the hamper and lift parcels and twist to put them in her vehicle. Dr. Basch noted that she had prior injuries to her back and neck related to an employment injury of October 30, 2010. He opined that the mechanism of

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<sup>4</sup> See *Elaine Pendleton*, 40 ECAB 1143 (1989); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (August 2012).

<sup>5</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

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

injury of using improper back mechanics on November 8, 2011 caused significant exacerbation/aggravation of her cervical and lumbar spine conditions. In a March 17, 2015 report, Dr. Basch reiterated that improper back mechanics caused her severe pain including radiculitis. In this report, he noted that appellant had been able to complete her duties until the injury of November 8, 2011, which marked a significant exacerbation of her conditions.

The Board finds that Dr. Basch's reports are insufficient to meet appellant's burden of proof with regard to causal relationship. Dr. Basch appears to base his conclusion that appellant's medical diagnoses were related to her November 8, 2011 employment incident on the fact that appellant was able to work prior to the November 8, 2011 incident and unable to work thereafter. However, neither the fact that a disease or condition manifests itself during the 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.<sup>8</sup> Causal relationship must be based on rationalized medical opinion evidence which accurately describes appellant's work duties and provides a medical explanation with regard to the pathophysiological process by which these duties would have caused or aggravated the condition.<sup>9</sup>

An award of compensation may not be based on surmise, conjecture, or speculation.<sup>10</sup> As appellant did not establish that her medical condition was causally related to the accepted factor of her employment, OWCP properly denied her claim.

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 she sustained an employment-related injury on November 8, 2011, as alleged.

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<sup>8</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>9</sup> *D.P.*, Docket No. 15-1325 (issued February 18, 2016).

<sup>10</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 31, 2015 is affirmed.

Issued: June 17, 2016  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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