

By letter dated March 25, 2015, the employing establishment controverted the claim.

By letter dated April 6, 2015, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed to support his claim and was directed to submit such evidence within 30 days.

In an April 17, 2015 narrative statement, appellant explained that on January 26, 2015 he was at work and dropped his gloves in a puddle of water. As he bent down, he felt a sharp burning across his back. Appellant notified his supervisor of his injury at the end of shift. When the pain continued to worsen, he sought medical treatment on January 28, 2015 and was off work for treatment until he returned to full-duty work on February 9, 2015. Appellant explained that he had never before been injured at work. He stated that, in November 2013, he had experienced back spasms which resolved quickly and had no bearing on this incident.

In support of his claim, appellant submitted medical and diagnostic reports dated January 28 through April 16, 2015 from Dr. Richard A. Weisman, a Board-certified-neurologist. In a January 28, 2015 diagnostic report, Dr. Weisman reported that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed mild multilevel spondylosis, a small midline annular tear at L3-4, a midline disc bulge at L4-5, and a small right paracentral disc herniation at L5-S1 with slight impingement upon the right S1 root.

In a January 28, 2015 report, Dr. Weisman reported that appellant was a postal employee whose duties entailed driving a truck and moving and lifting heavy containers of bulk mail. Two days prior appellant bent over to pick up his gloves and developed a sharp excruciating pain across his lumbar spine, which had gone into spasm. Dr. Weisman noted that in November 2013 appellant had a similar event which was less intense. He was never sent for a lumbar MRI scan at that time because his symptoms resolved. Dr. Weisman provided findings on physical examination, reviewed the lumbar MRI scan, and diagnosed lumbar radiculopathy and lumbar pain radiating down the right leg.

In a March 24, 2015 report, Dr. Lisa Mainier, a Doctor of Osteopathic Medicine, reported that appellant reinjured his back on March 16, 2015 when he was lifting the gate on the back of his work truck, following a January 26, 2015 injury. She noted a history of disc herniation and diagnosed lumbar radiculopathy, lumbar strain, and lumbar disc herniation.

In a March 25, 2015 diagnostic report, Dr. Weisman reported that a lumbar MRI scan revealed a new right posterolateral free fragment disc herniation at L4-5 compressing the thecal sac and right L5 root. Findings also included a small right posterolateral L5-S1 disc herniation impinging upon the right S1 root and a minor midline bulge at L3-4. Dr. Weisman explained that, when compared to the previous MRI scan, the right-sided disc fragment herniation at L4-5 was a new finding.

In a March 25, 2015 medical report, Dr. Weisman reported that he initially examined appellant on January 28, 2015 for severe low back and right lower extremity radicular pain that began after he bent over to pick up gloves in a puddle two days prior. This caused appellant severe pain, decreased reflexes, and weakness of foot. A lumbar MRI scan revealed at that time a small right paracentral L5-S1 disc herniation impinging upon the right S1 root and bulges at

L3-4 and L4-5 without thecal sac or nerve root impingement. Dr. Weisman reported that appellant's symptoms improved following the January 26, 2015 employment incident until he experienced a major change in pain one week ago after he lifted the heavy tailgate of his work truck. Appellant complained of excruciating pain in the right lumbosacral region and right leg along with weakness and numbness. Dr. Weisman requested that appellant undergo an emergency MRI scan due to the significant change in his symptoms. The MRI scan revealed a new right posterolateral free fragment disc herniation at L4-5 descending into the lateral recess, severely compressing, and posteriorly displacing the right L5 root. Dr. Weisman noted that the small right posterolateral protrusion at L5-S1 remained unchanged. He explained that appellant's worsening symptoms correlated with the new right-sided disc herniation and restricted him from returning to work.

In an April 16, 2015 report, Dr. Weisman provided a history of the January 26, 2015 injury and findings of the January 28, 2015 lumbar MRI scan. He noted that appellant resumed work and his symptoms resolved. On March 25, 2015 appellant experienced a significant change in his symptoms and developed excruciating pain in the right lumbosacral region which radiated down into his right leg and foot after lifting the heavy tailgate of his work truck on March 16, 2015. On examination, he was found to have decreased sensation to touch and pain along the right lateral leg, right ankle jerk was absent, and straight leg raising was strongly positive on the right side. Dr. Weisman explained that these findings and symptoms were completely different from those of his January 2015 examination which were confirmed by the significant changes found in the emergency MRI scan. He noted that the new MRI scan findings were consistent with an event that occurred acutely when appellant lifted the gate of his work vehicle. Appellant had a new right posterolateral free fragment disc herniation at L4-5 compressing the thecal sac and right L5 root which was the cause of his current symptomology. Dr. Weisman further noted that appellant's January 26 and March 16, 2015 injuries were separate incidents which occurred at his place of employment and entailed two completely different injuries. He further noted that his partner, Dr. John B. Talbott, Board-certified neurologist, treated appellant in November 2013 for back spasms unrelated to either of the above-stated injuries.

By decision dated May 7, 2015, OWCP denied appellant's claim finding that the evidence of record failed to establish that his diagnosed conditions were causally related to the accepted January 26, 2015 employment incident.

On May 20, 2015 appellant requested reconsideration of the May 7, 2015 OWCP decision.

By letter dated May 15, 2015, Dr. Weisman expressed his disagreement with the May 7, 2015 OWCP decision and provided clarification pertaining to OWCP's comments. He explained that appellant's January 28, 2015 lumbar MRI scan revealed a small right paracentral disc herniation at L5-S1 following the January 26, 2015 work incident when appellant first loaded his truck and then bent over to pick up gloves, resulting in low back pain and spasms. The herniation at L5-S1 did not require surgery and appellant improved with conservative measures, returning to regular-duty work. Dr. Weisman explained that there were no MRI scans prior to January 28, 2015 and thus, nothing to compare. He noted that in 2013 appellant was briefly treated by Dr. Talbott for back spasms and was diagnosed with lumbar strain. Appellant's

symptoms did not require a lumbar MRI scan at that time as brief conservative treatment with a physical therapist resolved his symptoms. Dr. Weisman noted that the episode in 2013 was relatively insignificant and did not fit the classic signs or symptoms of a herniated disc and therefore no imaging was necessary. There was no lost time from work or claim filed for the 2013 back spasms and no follow up with Dr. Talbott. Dr. Weisman opined within a reasonable degree of medical certainty that there was no preexisting disc herniation and the 2013 back spasms had no causal relationship to the January 26, 2015 injury. As appellant worked without incident until the January 26, 2015 injury, Dr. Weisman argued that this injury occurred when appellant bent forward to pick up his gloves shortly after loading his work truck. During this causative activity, picking up work gloves after loading the work truck, he experienced a sudden onset of back pain which was consistent with his diagnosis, his examination, and the January 28, 2015 MRI scan findings.

Dr. Weisman further explained that on March 16, 2015 a new and separate work injury occurred when appellant was lifting the heavy tailgate of his work truck and developed excruciating pain in his right lumbosacral region radiating into his right leg and foot with significant numbness. Appellant's March 25, 2015 lumbar MRI scan revealed a new right posterolateral free fragment disc herniation at L4-5 compressing the thecal sac and right L5 root when compared to the January 28, 2015 study. The herniated disc at L5-S1 was unchanged. Dr. Weisman explained that there was a definite change between the January and March 2015 MRI scan at the L4-5 disc level which revealed a new free fragment. This was not present on the January 2015 MRI scan and was responsible for appellant's new onset of acute symptoms following the causative action of lifting the heavy tailgate of his work truck, and was responsible for his ongoing symptoms and need for surgical correction. Dr. Weisman noted that, while disc herniation at L5-S1 was present on both the January and March 2015 scan, it was not responsible for appellant's symptoms which were caused by the new free fragment disc herniation at L4-5. He explained that the new free fragment disc herniation at L4-5 was a direct result of the March 16, 2015 work injury when appellant experienced the acute onset of excruciating back and leg pain after lifting the tailgate of his work truck. Dr. Weisman noted submission of all relevant medical reports, including those prior to his January 26, 2015 injury. He opined that the January 26, 2015 injury was not related to, nor did it aggravate, anything that occurred in 2013. Dr. Weisman again reiterated that the separate March 16, 2015 work injury resulted in a right posterolateral free fragment disc herniation at L4-5 which was compressing the thecal sac and the right L5 root, resulting in severe back and leg pain, foot drop, numbness, and the need for surgery. He concluded by explaining that the free fragment disc herniation at L4-5 was also not related to, nor did it aggravate, anything that occurred in 2013.

In another letter dated March 15, 2015, Dr. Talbott reported that he had evaluated appellant in November 2013 due to complaints of back pain and lumbar spasm. He prescribed a few sessions of physical therapy that resulted in the resolution of appellant's back pain. Dr. Talbott noted that appellant's symptoms were relatively insignificant and did not require any further treatment or diagnostic testing. No MRI scan was performed in 2013 and appellant lost no time from work for his lumbar strain.

By decision dated August 19, 2015, OWCP affirmed the May 7, 2015 decision finding that the medical evidence of record failed to establish that his diagnosed conditions were causally related to the accepted January 26, 2015 employment incident.

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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

In order to determine whether an employee actually sustained a traumatic 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 which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.⁵ 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. This medical opinion must include an accurate history of the employee’s employment injury and must explain how the condition is related to the injury. The weight of 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.⁶

ANALYSIS

OWCP accepted that the January 26, 2015 employment incident occurred as alleged. The issue is whether appellant established that the incident caused a lumbar injury. The Board finds that he failed to submit sufficient medical evidence to support that his lumbar condition was causally related to the January 26, 2015 employment incident.⁷

² Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

³ Michael E. Smith, 50 ECAB 313 (1999).

⁴ Elaine Pendleton, *supra* note 2.

⁵ See 20 C.F.R. § 10.110(a); John M. Tornello, 35 ECAB 234 (1983).

⁶ James Mack, 43 ECAB 321 (1991).

⁷ See Robert Broome, 55 ECAB 339 (2004).

In medical and diagnostic reports dated January 28 through May 15, 2015, Dr. Weisman reported that on January 26, 2015 appellant bent over to pick up his work gloves after loading his truck and experienced low back pain and spasms. A January 28, 2015 MRI scan revealed a small right paracentral disc herniation at L5-S1 with slight impingement upon the right S1 root. Dr. Weisman noted a history of back spasms and lumbar strain in November 2013 which had resolved with conservative treatment. He explained that the 2013 incident was insignificant and was not the cause of appellant's January 26, 2015 injury as it did not fit the classic signs or symptoms of a herniated disc. Dr. Weisman believed that the injury occurred when he bent forward to pick up his gloves shortly after loading his work truck. During this causative activity, appellant experienced a sudden onset of back pain which was consistent with his diagnosis, examination, and the January 28, 2015 MRI scan findings.

The Board finds, however, that the opinion of Dr. Weisman is not well rationalized. Dr. Weisman noted a preexisting history of back spasms and lumbar strain. While he explained that these conditions had resolved, he failed to discuss the specific signs and symptoms of these prior injuries compared to examination findings following the January 26, 2015 injury to establish that the disc herniation not preexisting. A well-rationalized opinion is particularly warranted in this case due to appellant's history of the earlier conditions.⁸ Moreover, the Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.⁹

Dr. Weisman's opinion on causal relationship did not adequately explain how the January 26, 2015 employment incident could cause or otherwise aggravate his disc herniation other than generally noting the development of pain. His statement on causation fails to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how bending over to pick up gloves after loading a truck would cause or aggravate a disc herniation.¹⁰ Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.¹¹ The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.¹² Without explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed

⁸ *K.P.*, Docket No. 14-1330 (issued October 17, 2014).

⁹ *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹⁰ *S.W.*, Docket 08-2538 (issued May 21, 2009).

¹¹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

¹² *See Lee R. Haywood*, 48 ECAB 145 (1996).

condition, Dr. Weisman's opinion on causal relationship is equivocal in nature and of limited probative value.¹³

The Board notes that Dr. Weisman reported that the disc herniation at L5-S1, which appeared after the January 26, 2015 work incident did not require surgery and that appellant had improved with conservative measures, returning to regular duty. Dr. Weisman went on to explain that on March 16, 2015 appellant experienced a significant change in his symptoms after lifting the heavy tailgate of his work truck. A March 25, 2015 MRI scan revealed a new right posterolateral free fragment disc herniation at L4-5 when compared to the January 28, 2015 study. Dr. Weisman opined that appellant's current complaints were caused by the new free fragment disc herniation at L4-5, as evidenced by the March 25, 2015 lumbar MRI scan, which was a direct result of a March 16, 2015 work injury when appellant experienced the acute onset of excruciating back and leg pain after lifting the heavy tailgate of his work truck. In this instance, he is attributing appellant's current condition and injury to an employment incident having occurred on March 16, 2015. Dr. Weisman failed to attribute his current disability to the January 26, 2015 employment incident as filed by appellant in this traumatic injury claim, Claim No. xxxxxx754.¹⁴

The remaining medical evidence is also insufficient to establish causal relationship between appellant's injury and the January 26, 2015 employment incident. While Dr. Mainier's March 24, 2015 report provided a diagnosis of lumbar radiculopathy, lumbar strain, and lumbar disc herniation, her report is of limited probative value as she failed to state any opinion on the cause of appellant's injury.¹⁵ Dr. Talbott's March 15, 2015 report discussed appellant's November 2013 lumbar spasms yet made no reference to the January 26, 2015 injury or disc herniation. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁶ Any medical opinion evidence appellant may submit to support his claim should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident, in particular physiologically, caused or aggravated his lumbar injury.¹⁷

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

¹³ See *L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

¹⁴ A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

¹⁵ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁶ *Id.*

¹⁷ *T.G.*, Docket No. 14-751 (issued October 20, 2014).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a lumbar injury causally related to the January 26, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 19, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 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