



This case has previously been before the Board.<sup>3</sup> The facts and circumstances set forth in the Board's prior decision are incorporated herein by reference. The facts relevant to this appeal are set forth below.

### **FACTUAL HISTORY**

Appellant, a 25-year-old border patrol officer, filed a traumatic injury claim (Form CA-1) on September 5, 2014, alleging that he strained his lower back after attending back-to-back training classes on August 29, 2014. He explained that after back-to-back response tactic classes his back became sore. Appellant then took a bus to class and his back became irritated. Later, during an interview class, he experienced back spasms.

An authorization for medical treatment (Form CA-16) was issued by appellant's supervisor on September 5, 2014 for appellant's medical treatment by the Southern Orthopedic Group.

On September 5, 2014 appellant was seen by Dr. Michael Dunn, a Board-certified family practitioner, who found on physical examination of appellant's back revealed he was nontender to palpation, motor strength and reflexes were equal bilaterally, straight leg raise was negative, and his gait was normal. Dr. Dunn noted that appellant had worsening pain, and he diagnosed possible lumbar radiculopathy.

Dr. Douglas Adolphson, a diagnostic radiologist, interpreted a magnetic resonance imaging (MRI) scan taken of appellant's lumbar spine on September 5, 2014 and noted a broad-based central disc protrusion at L5-S1 and mild bilateral L5-S1 neural foraminal encroachment.

On September 9, 2014 OWCP advised appellant that the evidence of record was insufficient to establish that an incident occurred on August 29, 2014. Appellant was afforded 30 days to submit additional evidence regarding the incident and a rationalized medical report establishing causal relationship between the alleged incident and a diagnosed medical condition.

In a report dated September 24, 2014, Dr. Waqar Waheed, Board-certified in neurology and neuromuscular medicine, advised that appellant was experiencing bilateral lower extremity weakness and pain which began approximately three months previously when he started training at a law enforcement academy in Georgia. He reported that appellant was involved in significant physical activity when he started to experience bilateral knee pain. Appellant was evaluated and diagnosed with possible bilateral knee tendinitis. He continued with his training, but began having pain radiating from his buttocks bilaterally to the posterior aspect of his thighs, which had a numbness and tingling sensation. Dr. Waheed asserted that appellant's condition continued to deteriorate and he started experiencing weakness in the lower extremities and spasms with associated numbness, tingling sensation, and flushing. Appellant underwent a full spine MRI scan which showed mild degenerative changes at C5-6 and disc protrusion at L5-S1 with mild L5-S1 neuroforaminal stenosis. Dr. Waheed advised that the MRI scan did not show any evidence of myelopathy, upper motor neuron deterioration process, or motor neuron disease. Dr. Waheed explained that if appellant's nerve conduction studies were normal, then it was

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<sup>3</sup> Docket No. 15-1653 (issued November 19, 2015).

possible that his symptoms could be related to musculoskeletal symptoms, perhaps aggravated by a mood disorder. He scheduled appellant for further diagnostic tests.

By decision dated October 17, 2014, OWCP denied appellant's claim, finding that he failed to meet his burden of proof to establish a low back injury causally related to the August 29, 2014 incident.

On November 12, 2014 appellant requested an oral hearing before an OWCP hearing representative. On May 4, 2015 OWCP sent a notice of hearing to appellant informing him that a hearing was scheduled for June 12, 2015 at 10:00 a.m. Appellant did not appear at the scheduled hearing.

By decision dated June 25, 2015, OWCP determined that appellant had abandoned his request for a hearing. Appellant appealed to the Board. In a November 19, 2015 decision, the Board affirmed the June 25, 2015 decision.<sup>4</sup>

On October 6, 2015 appellant, through counsel, requested reconsideration of OWCP's October 17, 2014 decision.

In a November 21, 2014 report, Dr. Dunn advised that appellant had complaints of lower back pain and bilateral knee pain which occurred while at work on August 29, 2014. He related that appellant underwent MRI scans which revealed no abnormalities. Dr. Dunn reported that appellant had back pain with radiating pain into the right and left leg. This stemmed from an August 29, 2014 work injury. The injury occurred while he was performing sprints during physical training exercises. Appellant related that the pain in his back and legs became progressively worse to the point where he developed weakness, numbness, and tingling in both legs and feet. Dr. Dunn opined that the injuries to the lumbar spine and knees were directly related to the August 29, 2014 work incident.

In a decision dated February 18, 2016, OWCP denied modification of its October 17, 2014 decision. It found that none of the medical reports submitted provided a sufficiently rationalized explanation as to how the diagnosed medical conditions were causally related to the claimed August 29, 2014 work incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish that 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.<sup>6</sup> These are the essential elements of each and every

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<sup>4</sup> Docket No. 15-1653 (issued November 19, 2015).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>8</sup> 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.<sup>9</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>10</sup>

An award of compensation may not be based on surmise, conjecture, or speculation. Neither, the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated, or aggravated by his employment is sufficient to establish causal relationship.<sup>11</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### ANALYSIS

OWCP has accepted that appellant participated in training exercises on August 29, 2014. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.<sup>12</sup> The Board finds that appellant has not submitted rationalized, probative medical evidence, based on a proper history of injury sufficient to establish that appellant's training exercises on August 29, 2014 caused a personal injury.

Appellant submitted reports from Dr. Dunn. Dr. Dunn noted in his September 5, 2015 report that appellant began having mild lower back pain after an injury which occurred on August 29, 2014. The pain radiated to the anterior aspect of the right and left leg and his feet. Dr. Dunn diagnosed lumbar radiculopathy. In his November 21, 2014 report, he reiterated that appellant had lower back pain. Dr. Dunn advised that a full spine MRI scan showed no abnormalities. He reported that appellant had back pain radiating into the right and left leg, which occurred while he was performing sprints during physical training exercises on August 29, 2014. Dr. Dunn advised that the back and leg pain had worsened to the extent where he developed weakness, numbness, and tingling in both legs and feet. He opined that appellant's injuries to his lumbar spine and knees were directly related to the August 29, 2014 work incident.

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<sup>7</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(e)(e).

<sup>10</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>11</sup> *Id.*

<sup>12</sup> *Carlone*, *supra* note 8.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.<sup>13</sup> While Dr. Dunn noted that appellant performed sprints on the day in question, the Board notes that appellant did not allege that he performed sprints on August 29, 2014. Rather, appellant provided a detailed explanation that his back became sore after tactic response class, a bus trip, and interview class, which occurred on August 29, 2014. Dr. Dunn did not opine that appellant sustained a low back injury while performing any of appellant's accepted activities. As such Dr. Dunn's report lacked a proper history of the facts and medical rationale to support his conclusion regarding causal relationship.<sup>14</sup>

In his September 24, 2014 report, Dr. Waheed opined that appellant was experiencing bilateral lower extremity weakness and pain which began approximately three months previously when he started training at a law enforcement academy in Georgia. He noted that appellant was involved in significant physical activity and began having pain radiating from his buttocks to the posterior aspect of his thighs, with a numbness and tingling sensation. Dr. Waheed advised that appellant started experiencing weakness in the lower extremities and spasms with associated numbness, tingling, and flushing. He reported that a full spine MRI scan showed mild degenerative changes at C5-6 and disc protrusion at L5-S1 with mild L5-S1 neuroforaminal stenosis. Dr. Waheed opined that the MRI scan did not show any evidence of myelopathy, upper motor neuron deterioration process, or motor neuron disease. He did not provide a medical opinion that appellant's condition was causally related to his training activities on August 29, 2014. Rather, Dr. Waheed related that appellant's condition could be related to a musculoskeletal disorder aggravated by a mood disorder. Again, he did not note a history of injury which corresponded with appellant's allegations. Lacking a medical explanation as to how the accepted employment activities on August 29, 2014 would have caused appellant's diagnosed conditions, the Board finds that Dr. Waheed's reports are of limited probative value.<sup>15</sup>

OWCP also received a lumbar spine MRI scan report from Dr. Adolphson. While Dr. Adolphson's diagnostic report provided findings pertaining to lumbar spine, the report is of limited probative value as it failed to state any opinion as to the cause of appellant's injury.<sup>16</sup>

OWCP advised appellant of the evidence required to establish his claim, but appellant failed to submit such evidence. Causal relationship must be established by rationalized medical opinion evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the August 29, 2014 work incident would have caused the claimed injury. Accordingly, he has not established that he sustained a lower back injury causally related to the accepted August 29, 2014 employment incident.

The Board notes that the employing establishment executed a Form CA-16 on September 5, 2014 authorizing medical treatment. The Board has held that where an employing

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<sup>13</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>14</sup> *Id.*

<sup>15</sup> See *S.R.*, Docket No. 16-0657 (issued July 13, 2016).

<sup>16</sup> See *A.B.*, Docket No. 16-0556 (issued June 23, 2016).

establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim.<sup>17</sup> Although OWCP denied appellant's claim for an injury, it did not address whether he is entitled to reimbursement of medical expenses pursuant to the Form CA-16. The Board finds that, upon return of the case record, this matter should be addressed.

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 failed to meet his burden of proof to establish a back injury causally related to the August 29, 2014 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 18, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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

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<sup>17</sup> See *D.M.*, Docket No. 13-535 (issued June 6, 2013). See also 20 C.F.R. §§ 10.300 and 10.304.