

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury causally related to an April 4, 2015 accepted employment incident.

FACTUAL HISTORY

On April 21, 2015 appellant, then a 43-year-old maintenance mechanic, filed a traumatic injury claim (Form CA-1) alleging that on April 4, 2015 he experienced lower back pain as a result of continuously twisting his back while passing boxes and replacing air filters. He indicated that he began to have severe pain on April 13, 2015, but was not able to visit the employee health unit until April 14, 2015. Appellant stopped work on April 16, 2015.

Appellant submitted a form report dated April 15, 2015, which noted a date of injury of April 4, 2015. It indicated that he was a mechanic who had been carrying a box of air filters up many steps and felt a snap in his lower back after reaching to replace the filters several times. The report indicated a diagnosis of lumbar strain.

The employing establishment issued appellant an undated Authorization for Examination and Treatment (Form CA-16), which indicated that he was authorized to seek medical treatment related to an April 4, 2015 injury. The description of injury was reported as carrying boxes of filters and climbing steps several times. The form did not note that any specific medical provider authorized to provide treatment.

Dr. Rida Azer, a Board-certified orthopedic surgeon, initially treated appellant and in reports dated April 10 and 17, 2015 mentioned his complaints of increasing pain in the cervical and lumbar spine region and in the right and left shoulder. Upon examination, she observed that he was tender over C5, C6, and C7 and over the L4, L5, and S1. Dr. Azer reported pain and muscle spasm on movements of the cervical and lumbar spine. She related that a bilateral shoulder x-ray examination showed osteophyte formations along the inferior aspect of the right and left acromion and over the inferior aspect of the acromioclavicular joint. X-rays of the lumbar spine also revealed narrowing of the interspace between L4-5 and L5-S1 with osteophyte formations. Dr. Azer indicated that appellant should be on bedrest and remain off work for 10 days. She also recommended that he undergo electromyography (EMG) and nerve conduction velocity (NCV) studies. Dr. Azer provided an April 17, 2015 work status note, which indicated that appellant was disabled from performing his work duties from April 17 to 27, 2015. She noted a diagnosis of lumbar disc syndrome.

Appellant was also treated in the employee health unit by Dr. Heike Bailin, a Board-certified family practitioner. In an April 15, 2015 report, Dr. Bailin related that on April 4, 2015 appellant had been carrying a box of air filters, weighing one to two pounds, up many steps, and had reached to replace filters several times when appellant felt a snap in his lower back. He noted that appellant continued to complain of lower back pain, which worsened with carrying, lifting, and climbing stairs. Dr. Bailin indicated that a physical examination was deferred. He diagnosed lumbar strain. Dr. Bailin completed forms dated April 15 and 20, 2015, which noted that appellant was disabled from performing his employment duties beginning April 17, 2015.

Dr. Azer conducted a follow-up examination and in an April 27, 2015 report related appellant's chief complaint of pain in the neck and lower back. Upon examination, she observed paraspinal muscle tenderness in the cervical and lumbar spine. Range of motion of the cervical and lumbar spine was significantly restricted and painful. Dr. Azer diagnosed lumbar disc syndrome and cervical disc syndrome. She indicated that appellant was disabled until May 27, 2015.

In an April 27, 2015 note, Dr. Bailin reported diagnoses of lumbar and cervical disc syndrome and related that appellant was disabled from performing his duties from April 27 to May 27, 2015.

Appellant underwent an EMG/NCV studies examination by Dr. Daniel Ignacio, Board-certified in physical medicine and rehabilitation, who related in a May 4, 2015 report that appellant was a mechanic who was injured at work on April 4, 2015. Dr. Ignacio reported that the examination revealed moderately severe bilateral carpal tunnel syndrome and bilateral L5 right S1 radiculopathies.

Dr. Azer continued to treat appellant and indicated in reports dated May 27 and June 17, 2015 that he still had pain in his cervical, lumbar spine, and right knee following an April 7, 2015 work injury. She observed tenderness over the C5, C6, and C7 and tenderness over the L4, L5, and S1 with pain and muscle spasm on movement. Examination of the right knee revealed tenderness over the medial and lateral joint line and effusion of +1 to 2. Dr. Azer related that a May 4, 2015 EMG/NCV studies demonstrated moderately severe bilateral carpal tunnel syndrome and bilateral L5-S1 radiculopathy. She noted that appellant should remain off work and provided a work status note.

In a June 17, 2015 form report, a nurse practitioner noted diagnoses of lumbar strain/sprain and lumbar disc syndrome. The nurse indicated that appellant was disabled from May 27 to June 17, 2015 and that he had been advised to avoid pushing, pulling, lifting, and overhead use until July 12, 2015.

Appellant was examined again by Dr. Bailin who noted in June 17 and July 14, 2015 reports that a May 28, 2015 form showed diagnosis of lumbar disc syndrome and cervical disc syndrome. Dr. Bailin further indicated that a private orthopedist advised that appellant was totally disabled due to severe bilateral carpal tunnel, lumbar disc syndrome, and cervical disc syndrome. He opined that appellant was disabled from work from May 27 to June 17, 2015.

On July 16, 2015 appellant filed claims for wage-loss compensation (Forms CA-7) for the period June 14 to August 8, 2015.

Dr. Azer continued to treat appellant and related in reports dated July 17 and 27, 2015 that he still had complaints of right knee and low back pain. She indicated that a June 30, 2015 magnetic resonance imaging (MRI) scan of the right knee revealed mild tricompartmental osteoarthritis, grade 2 sprain of the medial collateral ligament, and chronic diffuse synovitis with moderate size effusion. Dr. Azer provided physical examination findings similar to appellant's previous examinations. She diagnosed cervical discs syndrome with radiculopathy versus double crush injury with bilateral carpal tunnel syndrome and impingement syndrome of the left

shoulder. Dr. Azer reported that appellant could not perform any activities that involved bending, stooping, kneeling, squatting, pushing, pulling, and lifting heavy objects. She recommended that he continue with physical therapy.

In a letter dated July 20, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit additional evidence to establish that he sustained a diagnosed condition as a result of the April 4, 2015 employment incident. Appellant was afforded 30 days to submit the additional evidence.

In a July 27, 2015 narrative report, Dr. Azer indicated that appellant had an accepted condition for the diagnosis code of 999.9 (Other, Unspecified Complications of Medical Care). She noted that she reviewed his medical records for treatment of multiple orthopedic conditions resulting from an April 4, 2015 work injury. Dr. Azer related that EMG/NCV studies revealed severe bilateral carpal tunnel syndrome and bilateral L5, right S1 radiculopathy. She pointed out that she had previously diagnosed cervical disc syndrome with radiculopathy versus double crush injury, with bilateral carpal tunnel syndrome, and impingement syndrome of the left shoulder. Upon examination, Dr. Azer observed tenderness over C4, C5, C6, and C7 and tenderness over L4, L5, and S1 with pain and muscle spasm on movements. Head compression test was positive bilaterally. Dr. Azer reported that appellant could not perform any activities that involved bending, stooping, kneeling, squatting, pushing, pulling, and lifting heavy objects. In a July 27, 2015 work status note, she indicated that he was disabled from July 17 to September 7, 2015.

On July 28, 2015 appellant submitted an April 4, 2014 report by Dr. Azer, which indicated that appellant's condition was related to strenuous work as a mechanic, pushing, lifting, and performing strenuous activities for many years. He provided examination findings and diagnosed cervical disc syndrome with radiculopathy with bilateral carpal tunnel syndrome and impingement syndrome of the left shoulder.

On August 10, 2015 OWCP received appellant's response, through his representative. She stated that on April 4, 2015 appellant was injured at work and followed proper protocol and procedure related to the work-related injury. Appellant's representative noted that on or about April 15, 2015 the claim was accepted. She also reported that appellant was deemed totally disabled by his treating physicians. Appellant also submitted handwritten progress notes dated July 17 to September 21, 2015 by Dr. Bailin.

By letter dated August 20, 2015, appellant's representative alleged that OWCP was in violation of its provisions under FECA to compensate an injured claimant for a work-related injury. She asserted that OWCP was obstructing appellant's medical services because it was not compensating him for his medical treatment. Appellant's representative noted that appellant had at least five outstanding claims that had failed to be processed and compensated. She related that this failure by OWCP was causing him additional pain and suffering.

OWCP denied appellant's claim in a decision dated August 20, 2015. It accepted that the April 4, 2015 incident occurred as alleged and that he sustained diagnosed cervical disc syndrome and bilateral carpal tunnel conditions. OWCP, however, denied appellant's claim, finding that the medical evidence of record was insufficient to establish that his condition was causally related to the accepted incident.

Appellant requested a review of the written record by an OWCP hearing representative which was received by OWCP on August 25, 2015. Appellant's representative indicated that she was requesting reversal of OWCP's decision and expedited processing of his wage-loss compensation claims. She alleged that a July 27, 2015 report demonstrated that appellant's injury was caused by the April 4, 2015 work injury. Appellant's representative noted that the physician also recommended that appellant not work. She related that his injury occurred as a result of his specific duties as a maintenance mechanic. Appellant's representative explained that, while appellant was performing his duties, which included passing and carrying boxes of filters in a mechanical room where he was changing filters, he felt a snap in his lower back, followed by extreme pain days later. She pointed out that he properly reported the injury within 30 days and provided medical documentation. Appellant's representative provided a timeline of appellant's injury and claim. She mentioned that in *Schultz v. Workers' Compensation Appeals Board*, (January 6, 2015) B255678, the decision denying benefits was annulled. Appellant's representative reported that OWCP's denial of appellant's claim had interfered with his necessary medical treatment, unnecessarily burdened and overwhelmed him, and caused extreme financial hardship, pain, and suffering.

Dr. Azer treated appellant and reported in a September 17, 2015 work status note that he had diagnoses of lumbar sprain/strain, lumbar disc syndrome, right knee sprain/strain, and cervical disc syndrome. She indicated that he was disabled from work from September 7 to October 19, 2015.

A nurse practitioner provided October 21 and 22, 2015 forms, which indicated that appellant could work with restrictions for the period October 21 to November 9, 2015.

In appellant's notes dated October 20 and 22, 2015, Dr. Bailin mentioned a date of injury of April 4, 2015 and diagnoses of lumbar disc syndrome, cervical disc syndrome, bilateral carpal tunnel syndrome, right knee strain/sprain, and left shoulder impingement. He reported that appellant received three injections in the low back so that he could return to light duty. Dr. Bailin authorized appellant to return to work with restrictions from October 21 to November 9, 2015.

By decision dated November 4, 2015, an OWCP hearing representative affirmed the August 20, 2015 decision. She found that the medical evidence of record failed to contain rationalized medical opinion, which established that appellant's medical conditions were causally related to the April 4, 2015 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁵ including that he or she sustained an injury in the performance of duty and that any

⁴ *Supra* note 2.

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

specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁶

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.⁷ There are two components involved in establishing the fact of injury. 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.⁸ 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.⁹ 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.¹⁰

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

ANALYSIS

Appellant alleged that on April 4, 2015 he sustained a back injury when he was passing boxes and changing and replacing air filters. OWCP accepted that the employment incident occurred as alleged and that he was diagnosed with cervical and lumbar disc syndrome. It denied appellant’s claim finding that the medical evidence failed to establish that his condition resulted from the accepted incident. The Board finds that he has not met his burden of proof to establish that his back condition was causally related to the April 4, 2015 employment incident.

Dr. Azer treated appellant and in reports dated April 10 to September 17, 2015 indicated that he complained of increasing pain in the cervical and lumbar spine region and in the right and left shoulder. In her July 27, 2015 report, Dr. Azer mentioned that she was treating appellant for

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

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

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

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

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

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

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

¹³ *James Mack*, 43 ECAB 321 (1991).

multiple orthopedic conditions resulting from an April 4, 2015 work injury. Upon examination, she observed paraspinal muscle tenderness, pain, and muscle spasm over the cervical and lumbar spine. Head compression test bilaterally and range of motion was significantly restricted and painful. Dr. Azer diagnosed cervical and lumbar disc syndrome.

Although Dr. Azer described the April 4, 2015 work incident, she also attributed appellant's cervical and lumbar conditions to the strenuous activity of working as a mechanic for many years. Appellant submitted an April 4, 2014 report by her where he indicated that his condition was related to strenuous work as a mechanic, which involved pushing, lifting, and performing strenuous activity for many years. The Board notes that, while Dr. Azer's reports provide some support for causal relationship, her opinion is equivocal, as best, as she provided no clear medical opinion on whether his condition resulted from the April 4, 2015 work incident or from his many years of work as a mechanic. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.¹⁴ An award of compensation may not be based on surmise, conjecture, or speculation.¹⁵

Appellant was also treated by Dr. Bailin. In reports dated April 15 to October 22, 2015, Dr. Bailin related that on April 4, 2015 appellant felt a snap in his lower back after he had been carrying a box of air filters, walked up many steps, and reached to replace air filters several times. He indicated that a physical examination was deferred. Dr. Bailin diagnosed lumbar and cervical disc syndrome. He accurately described the April 4, 2015 employment incident and provided a medical diagnosis. Dr. Bailin did not, however, provide an opinion on whether the employment incident caused or contributed to appellant's cervical and lumbar condition. 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 on the issue of causal relationship.¹⁶ The fact that a diagnosed condition is mentioned along with the April 4, 2015 employment incident is not sufficient to establish a causal relationship. A physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.¹⁷ For this reason, Dr. Bailin's reports fail to establish appellant's claim. Likewise, the May 4, 2015 diagnostic examination report by Dr. Ignacio does not contain an opinion on causal relationship and is, therefore, insufficient to establish appellant's claim.¹⁸

Appellant was also treated by a nurse practitioner. In various forms dated June 17 and October 20 and 22, 2015, the nurse practitioner indicated diagnoses of lumbar strain and lumbar disc syndrome. Appellant was advised to remain off work and to avoid pushing, pulling, lifting, and overhead use. These forms, however, fail to establish causal relationship because nurse

¹⁴ *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

¹⁵ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁶ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁷ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁸ *L.B.*, Docket No. 16-0486 (issued June 28, 2016).

practitioners are not considered physicians as defined under FECA.¹⁹ Accordingly, these reports are of no probative value.

On appeal, appellant, through his representative, alleges that his claims for benefits, including claims for continued physical therapy and pain management and for reimbursement, were unjustly and wrongfully denied by OWCP. He stated that for over six months he was without compensation and did not receive medical treatment, which caused him more pain and suffering. The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.²⁰ Despite appellant's allegations, he has not provided sufficient medical evidence to establish that his cervical and lumbar disc syndrome were causally related to the April 4, 2015 employment incident. Because he has not provided sufficient medical rationale, he did not meet his burden of proof to establish his claim.²¹

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 traumatic injury causally related to an April 4, 2015 employment injury.

¹⁹ 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005). Section 8102(2) of FECA 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 nurses, physician assistants, physical and occupational therapists are not "physicians" as defined by FECA, their medical opinions regarding diagnosis and causal relationship are of no probative medical value.

²⁰ *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, *supra* note 9.

²¹ A properly completed Form CA-16 authorization may constitute a contract for payment of medical expense to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). The CA-16 form of record in this case, however, did not specifically authorize any medical treatment.

ORDER

IT IS HEREBY ORDERED THAT the November 4 and August 20, 2015 merit decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 4, 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