

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**B.W., Appellant**

**and**

**DEPARTMENT OF THE ARMY, ANNISTON  
ARMY DEPOT, Anniston, AL, Employer**

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**Docket No. 16-1012  
Issued: October 21, 2016**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On April 12, 2016 appellant filed a timely appeal from a March 16, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish a traumatic injury causally related to his accepted work incident on April 30, 2013.

**FACTUAL HISTORY**

On July 16, 2013 appellant, then a 47-year-old welder, filed a traumatic injury claim (Form CA-1), alleging that he injured his lower back on April 30, 2013 while lifting parts.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

A July 2, 2007 magnetic resonance imaging (MRI) scan of the lumbar spine demonstrated bilateral spondylolysis with anterior displacement of L5 on S1 and degenerative changes at L5-S1. In a May 1, 2013 employing establishment clinic treatment note, Dr. Cedric McCord, Board-certified in occupational medicine, noted a history that appellant had a prior claim for low back pain in December 2009 and reported that he had an acute onset of low back pain the previous day when lifting a heavy basket. The physician's examination demonstrated tenderness to palpation over the lumbar region and limited back range of motion due to severe pain. Dr. McCord diagnosed lumbar radiculopathy, indicated with a checkmark that the condition was employment related, and provided physical restrictions.

The employing establishment authorized examination and treatment, on an OWCP Form CA-16, with Dr. Michael R. Wiedmer, a Board-certified orthopedic surgeon, on May 1, 2013.

In reports dated May 1, 2013, Dr. Wiedmer noted a history that appellant injured his back the previous day when his job was changed and he had to stoop and lift all day. Appellant's back pain gradually progressed in severity and radiated down the left leg. Dr. Wiedmer reported that lumbar spine x-ray revealed disc space narrowing at L5-S1 with grade 1 and 2 spondylolisthesis. Physical examination demonstrated a positive straight-leg raise on the left. Dr. Wiedmer diagnosed mechanical low back pain and radiculopathy and surmised that it appeared to be an ongoing problem that was acutely aggravated by this job change at work. He prescribed medication and advised that appellant should be off work for 72 hours and then could return to light duty with no stooping. A May 8, 2013 MRI scan of the lumbar spine was compared with the July 2, 2007 study. The 2013 scan demonstrated multilevel degenerative changes, most notably at L4-5 and L5-S1 with moderate to severe foraminal narrowing at L5-S1 and no significant central canal narrowing.

On May 9, 2013 Dr. Wiedmer advised that appellant would be off work until May 10, 2013, and on May 16, 2013 advised that appellant was released to light duty, seated work only, with no stooping, squatting, or lifting. Dr. Gaylyn Horne, a Board-certified anesthesiologist, performed epidural spinal injections on May 16 and 22, 2013. Appellant continued modified duty. On June 4, 2013 Dr. Wiedmer noted that appellant reported that his back was no better after the epidural blocks. He recommended consultation with Dr. Thomas A.S. Wilson, Jr., a Board-certified neurosurgeon.

In a July 29, 2013 report, Dr. Wilson noted that appellant reported a history that on April 30, 2013 he had acute onset of radiating back pain when he picked up baskets of automotive parts at work and that he had a very similar work injury several years prior that improved with symptomatic treatment. He noted a past history of a motor vehicle accident. Physical examination demonstrated diffuse lumbar tenderness with decreased range of motion, and a negative straight-leg raise test. Dr. Wilson reviewed the lumbar spine MRI scan and diagnosed recurrent back and leg pain secondary to lumbar spondylolisthesis with spondylolysis. He recommended physical therapy and light duty. Dr. Wilson advised that lifting was restricted to five pounds and appellant could not stoop or deep bend and could not operate heavy equipment. Appellant began physical therapy in August 2013.

On September 9, 2013 Dr. Wilson noted appellant's complaint of persistent and severe low back pain with paresthesias in both legs and intermittent weakness on the left. He provided

results on examination and recommended decompressive laminectomy at L5-S1 with interbody fusion due to persistent back and leg pain secondary to lumbar spondylolisthesis at L5-S1. Dr. Wilson requested surgery authorization.

By letter dated October 2, 2013, OWCP noted that when appellant's claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It noted that it had reopened the claim because he requested authorization for surgery. OWCP requested additional evidence and afforded appellant 30 days to respond to its inquiries.

In a response dated October 11, 2013, appellant noted that in July 2007 he saw Dr. Wiedmer for low back pain and appellant began working light duty. He reported that on April 30, 2013 his job was changed to material handler, which required repetitive unloading, stacking, binning, rotating, and lifting engine parts that weighed 50 to 100 pounds. Appellant advised that after doing this for a few hours his back began to hurt, and at 10:00 a.m. he was instructed to rest for the rest of the day. He also noted that on May 1, 2013 he reported to the employing establishment clinic and then saw Dr. Wiedmer that day and returned to work based on his restrictions. Appellant alleged that his severe pain increased, that it restricted his daily activities, and that currently he was in constant pain.

In support of his claim appellant submitted a June 21, 2007 letter in which OWCP accepted sprain of back, lumbar region, with a date of injury of May 29, 2007,<sup>2</sup> brief clinic notes dated July 18, 2007 and January 18, 2008 from Dr. Wiedmer describing degenerative changes on the MRI scan, a December 2, 2009 claim for a back injury that day,<sup>3</sup> and an employing establishment clinic note dated January 7, 2010 authorizing restricted duty.

On October 15, 2013 Dr. Wilson noted appellant's report of his prior back injury, the circumstances of the current April 30, 2013 injury, and his complaint of persistent severe low back pain with bilateral lower extremity paresthesias. He described MRI scan findings and diagnosed spondylolisthesis, lumbar stenosis, and lumbar disc degeneration. Dr. Wilson again recommended back surgery, opining that "the need for surgery is related to his work injury of April 30, 2013." On October 29, 2013 he advised that appellant was under his care and would be out of work pending surgery.

By decision dated November 13, 2013, OWCP denied the claim. It found the claimed incident occurred as alleged, but that the medical evidence submitted was insufficient to establish that the diagnosed condition was caused by the April 30, 2013 incident.

Appellant timely requested a review of the written record. He resubmitted Dr. Wilson's October 15, 2013 report. On February 19, 2014 Dr. Wilson reported that appellant needed to be off work until a March 12, 2014 appointment. On March 12, 2014 he advised that appellant

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<sup>2</sup> The June 2007 employment injury was adjudicated by OWCP under File No. xxxxxx813 and the instant claim for the April 30, 2013 injury under File No. xxxxxx313.

<sup>3</sup> The December 2009 claim was adjudicated under File No. xxxxxx683 and was a short-form closure.

could return to light work on March 17, 2014 with a 10-pound lifting restriction and no bending. The employing establishment authorized restricted duty.

In a decision dated May 2, 2014, an OWCP hearing representative affirmed the November 13, 2013 decision. The hearing representative found that the medical evidence submitted was insufficient to establish that the diagnosed lumbar spondylolisthesis, lumbar stenosis, and lumbar disc degeneration were caused by the April 30, 2013 lifting incident.

Thereafter Dr. Wilson submitted a February 19, 2014 treatment note in which he reiterated findings and conclusions. He advised that appellant had an L5-S1 fusion three months earlier, but that he still reported persistent diffuse lower back pain with numbness and paresthesias in both legs. On August 20, 2014 Dr. Wilson advised that appellant could return to light-duty work with a 10-pound lifting limit and could not wear steel-toed boots. The employing establishment honored these restrictions.

On April 28, 2015 appellant, through counsel, requested reconsideration. In support of the request he submitted one-page of a November 26, 2014 report in which Dr. Mark N. Hadley, a Board-certified neurosurgeon, noted that appellant, on April 30, 2014, had lifted a box of steel and felt a sudden pop with sharp low back pain which had continued to the present. Appellant continued that, although Dr. Wilson had performed an L5-S1 decompression and interbody fusion procedure, his low back pain was unchanged and had worsened, and Dr. Wilson did not recommend further surgery. Counsel maintained that the medical evidence, including the reports from Dr. McCord, Dr. Wiedmer, Dr. Wilson, and Dr. Hadley, established that the lifting incident of April 30, 2013 caused or contributed to appellant's lumbar degenerative disc disease and lumbar radiculopathy.

Appellant provided a September 2, 2014 report from Dr. Wilson which noted the history of the claimed April 30, 2013 injury and appellant's subsequent symptoms. He advised that, on November 25, 2013, he performed a decompressive laminectomy at L5-S1 with interbody fusion. Dr. Wilson reported that appellant did well until February 19, 2014 when he related worsening symptoms. He noted treatment recommendations and work restrictions. Regarding the cause of appellant's condition, Dr. Wilson opined that "based on history as it was related to us by him, I believe the need for surgery and subsequent treatment are related to the work injury of April 30, 2013."

In a merit decision dated June 4, 2015, OWCP denied modification of its prior decisions. It reviewed the record, noting that the report from Dr. Hadley was incomplete. OWCP concluded that the medical evidence did not contain a clear and factual explanation of how appellant's preexisting back condition was changed by the April 30, 2013 employment incident. It further found that the evidence of record was insufficient to support that the April 2013 incident was a consequence of the May 29, 2007 employment injury because it was accepted for lumbar sprain and not for extensive lumbar degenerative disc disease, which was preexisting and not work related.<sup>4</sup>

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<sup>4</sup> Counsel withdrew representation on September 10, 2015.

On December 21, 2015 appellant requested reconsideration. He submitted a September 4, 2015 treatment note in which Dr. Wiedmer advised that, in reviewing appellant's films and studies, the April 2013 injury led to an acute decompensation of his problem which failed all conservative modalities and has resulted in two lumbar spine surgeries. Dr. Wiedmer indicated that he explained to appellant that it was not uncommon for someone with an underlying degenerative disc to be doing well, and then have an injury which led to progression of the problem resulting in his present condition. He concluded that it was his opinion, as well as that of appellant's neurosurgeon, that the lumbar spine surgeries appellant had "were directly related to his on-the-job injury in April 2013."

In a merit decision dated March 16, 2016, OWCP denied modification of its prior decisions. It explained that to establish causal relationship, medical evidence must include a specific rationalized explanation and concluded that Dr. Wiedmer's report was insufficient because he merely gave a general explanation without objective findings comparing appellant's preinjury and post-injury condition.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,<sup>5</sup> including that he is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.<sup>6</sup> The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.<sup>7</sup>

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. There are two components involved in establishing fact of injury. 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>8</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>9</sup> 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

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<sup>5</sup> *J.P.*, 59 ECAB 178 (2007).

<sup>6</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>7</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>8</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>9</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

the employee.<sup>10</sup> Neither the mere fact that a disease or condition manifests itself during a 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>11</sup>

### ANALYSIS

It is undisputed that the April 30, 2013 incident occurred as alleged. The Board finds that the medical evidence submitted, however, is insufficient to establish that this incident resulted in an employment injury.

Medical evidence submitted to support a claim for compensation should reflect a correct history and the physician should offer a medically sound explanation of how the claimed work event caused or aggravated the claimed condition.<sup>12</sup> Appellant did not meet his burden of proof in this case as he has failed to submit the necessary medical opinion evidence required to establish his claim.

The July 2007 and May 2013 MRI scans did not establish a cause of any diagnosed conditions. Such medical evidence, which does not offer any opinion regarding the cause of an employee's condition, is of limited probative value on the issue of causal relationship.<sup>13</sup> Likewise, Dr. Horne's reports dated May 16 and 22, 2014 did not include an opinion as to the cause of any diagnosed condition. Dr. Hadley's November 26, 2014 report is incomplete as the history he provides, that appellant felt a pop in his back on April 30, 2013, is inconsistent with appellant's report that after working at a new job for a few hours on April 30, 2013 his back began to hurt. The Board has long held that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.<sup>14</sup>

In his May 1, 2013 report, Dr. McCord diagnosed lumbar radiculopathy and indicated with a checkmark that these conditions were employment related. When a physician's opinion on causal relationship consists only of checking "yes" to a form question, the opinion has little probative value and is insufficient to establish a causal relationship.<sup>15</sup> Dr. McCord provided no further explanation.

Dr. Wiedmer initially surmised on May 1, 2013 that appellant's low back pain and radiculopathy appeared to be an ongoing problem that was acutely aggravated by duty changes at work. While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should

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<sup>10</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>11</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>12</sup> *D.D.*, Docket No. 13-1517 (issued April 14, 2014).

<sup>13</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

<sup>14</sup> *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>15</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

be expressed in terms of a reasonable degree of medical certainty.<sup>16</sup> Dr. Wiedmer's opinion on May 1, 2013 is couched in speculative terms. He later advised on November 21, 2015 that the April 2013 incident led to acute decompensation and resulted in two lumbar spine surgeries. Dr. Wiedmer indicated that it was not uncommon for someone with an underlying degenerative disc to be doing well and then have an injury which led to progression of the problem. He concluded that appellant's lumbar spine surgeries appellant had "were directly related to [appellant's] on-the-job injury in April 2013." This opinion is again couched in speculative terms. Furthermore, a mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.<sup>17</sup> Dr. Wiedmer's opinion is insufficient to establish that appellant's diagnosed conditions were caused by the April 30, 2013 employment incident.

Dr. Wilson also provided reports supporting causal relationship, including his October 15, 2013 and September 2, 2014 reports. In the September 2, 2014 report, he opined that "based on history as it was related to us by him, I believe [that] the need for surgery and subsequent treatment are related to the work injury of April 30, 2013." This opinion is of limited probative value as it is conclusory in nature and not supported by medical rationale explaining the reasons why the April 30, 2013 work activity caused or contributed to appellant's back condition.<sup>18</sup>

It is appellant's burden to establish that a diagnosed condition is causally related to the April 30, 2013 incident. He submitted insufficient evidence to establish an injury caused by this incident.<sup>19</sup>

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 his burden of proof to establish a traumatic injury causally related to his accepted work incident on April 30, 2013.

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<sup>16</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>17</sup> *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

<sup>18</sup> *Id.*

<sup>19</sup> Where, as in this case, an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 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 *Tracy P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 16, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2016  
Washington, DC

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

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board