



## **FACTUAL HISTORY**

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts and procedural history are set forth below.

On July 24, 2012 appellant, then a 50-year-old resource development specialist,<sup>2</sup> filed a claim for traumatic injury (Form CA-1) alleging that on June 25, 2012 she sustained lumbar and bilateral shoulder injuries after moving tables, chairs, a tent, and other items at work. She did not stop work at the time of her claim.

In support of her claim, appellant submitted a July 30, 2012 physical therapy prescription from Dr. Pavel Conovalciuc, an attending Board-certified family practitioner. In a December 17, 2012 report, Dr. Conovalciuc noted the July 25, 2012 onset of lumbar and right hip pain without spasm after moving furniture at work. He diagnosed lumbago. Appellant also provided reports signed by a nurse practitioner, physician assistants, and physical therapists.

In a January 4, 2013 letter, OWCP advised appellant of the additional evidence needed to establish her claim, including a report from her attending physician diagnosing an injury and explaining how and why the identified work factors caused or contributed to that injury. It afforded her 30 days to submit additional evidence. In response, appellant submitted physical therapy notes dated from July 20, 2012 to January 3, 2013.

By decision dated February 8, 2013, OWCP denied appellant's claim, finding that fact of injury had not been established. It accepted that she was moving furniture and other items, as alleged on June 25, 2012. However, OWCP found that appellant had not submitted sufficient medical evidence in support of her claim to establish an injury. Appellant then appealed to the Board.

By decision and order issued January 2, 2014,<sup>3</sup> the Board affirmed OWCP's February 8, 2013 decision, finding that appellant had not met her burden of proof to establish that she sustained traumatic back and shoulder injuries in the performance of duty, as there was insufficient medical evidence supporting causal relationship.

In a May 24, 2014 letter, appellant requested reconsideration. She asserted that OWCP should accept her claim as the Social Security Administration (SSA) had approved her application for disability benefits. Appellant also contended that the medical evidence of record was sufficient to establish her claim. She submitted a November 5, 2013 report from Dr. William M. Shanks, a Board-certified orthopedic surgeon, performing an evaluation for a state benefits agency. Dr. Shanks related appellant's account of "taking down tents" on June 25, 2012 and summarized her treatment history. On examination, he noted a left-sided limp, tenderness to palpation of the lumbar spine, limited lumbar motion, possible weakness in the left

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<sup>2</sup> In a February 8, 2013 teleconference, OWCP verified that appellant was an employee of the employing establishment at the time of the claimed June 25, 2012 incident.

<sup>3</sup> Docket No. 13-1762 (issued January 2, 2014).

foot, tenderness to palpation of both knees, mild effusion of the left knee, and limited motion at both ankles, greater on the left. Dr. Shanks obtained x-rays showing widespread lumbar degenerative disc disease, facet joint arthritis in the lower lumbar spine, early degenerative arthritis of both hips and bilateral narrowing of the medial joint space of both knees, greater on the left. He diagnosed degenerative disc disease of the lumbar spine, early degenerative arthritis of both hips and bilateral knee pain with medial joint space narrowing. Dr. Shanks found appellant disabled from work and recommended referral to a spine surgeon.

Appellant also provided documents from a state benefits agency and SSA, her letters to OWCP asking for clarification of her appeal rights, letters of recommendation from the employing establishment, position descriptions and Office of Personnel Management (OPM) documents regarding job classification, her resume, and college transcript.

By decision dated June 10, 2014, OWCP denied modification of the February 8, 2013 decision. It found the evidence submitted was insufficient to establish causal relationship between any of the diagnosed conditions and the June 25, 2012 work incident. Appellant again appealed to the Board.

By decision dated November 21, 2014,<sup>4</sup> the Board affirmed OWCP's June 10, 2014 decision, finding that appellant had failed to meet her burden of proof to establish traumatic back and shoulder injuries in the performance of duty. The Board found that Dr. Shanks failed to explain how moving furniture on June 25, 2012 at work on June 25, 2012 caused or aggravated the claimed back and shoulder injuries.<sup>5</sup>

During the pendency of the prior appeal, appellant submitted a June 26, 2014 report from Dr. Miguel A. Schmitz, an attending Board-certified orthopedic surgeon. Dr. Schmitz related appellant's account of "pain everywhere" which she attributed to "lifting/pulling/pushing tents" at work on June 25, 2012. He diagnosed lumbar pain, bilateral knee pain, a left hip or thigh strain, and lumbar spondylosis with myelopathy at L3-4. Dr. Schmitz explained that, although he could not "make a connection between her presentation today" and the claimed injuries, "the sequence of events that pertain to lumbar strain started when she was at work and likely consist of lumbar strain."

In July 3 and October 16, 2015 letters, appellant requested reconsideration, contending that OWCP denied her access to medical care. She submitted copies of medical evidence previously of record.<sup>6</sup> Appellant also provided status inquiry correspondence from her elected representatives, and her letters to OWCP requesting information about her claim.

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<sup>4</sup> Docket No. 14-1620 (issued November 21, 2014).

<sup>5</sup> Under Docket No. 14-1620, appellant filed a petition for reconsideration which the Board denied on April 9, 2015. Docket No. 14-1620, *Order Denying Petition for Recon.* (issued April 9, 2015).

<sup>6</sup> On June 16 and 27, 2015 appellant filed occupational disease claims (Form CA-2) regarding the claimed June 25, 2012 injuries. OWCP assigned the two occupational disease claims File Nos. xxxxxx168 and xxxxxx551. In a July 14, 2015 letter, it advised appellant that it deleted File No. xxxxxx168 because it was a duplicate of File No. xxxxxx420. In an August 5, 2015 letter, OWCP advised her that it deleted File No. xxxxxx551 because it was a duplicate of File No. xxxxxx420, the current file.

By decision dated November 25, 2015, OWCP denied modification, finding that the evidence remained insufficient to establish causal relationship. It accepted that, while in the performance of duty on June 25, 2012, appellant moved chairs and took down tents. Also, the medical evidence supported that appellant was diagnosed with several conditions. However, OWCP found that appellant's physicians had not provided sufficient medical reasoning explaining how and why the accepted work incidents would have caused the diagnosed conditions.

### **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 filed within the applicable time limitation; that an injury was sustained while 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>7</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>8</sup>

In order to determine whether an employee 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 that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.<sup>9</sup> An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>10</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>11</sup>

The medical evidence required to establish causal relationship is generally rationalized medical opinion 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.<sup>12</sup> To be of probative value, a physician's opinion must relate the condition to the accepted incident, must be based on a complete and accurate factual history, and must contain adequate medical rationale in support of the conclusions.<sup>13</sup> The factors that comprise the evaluation of medical evidence

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<sup>7</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>8</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>9</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>10</sup> *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

<sup>11</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>12</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>13</sup> *Mary J. Ruddy*, 49 ECAB 545 (1998).

include the physician's relative area of expertise, the opportunity for and thoroughness of physical examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested in reaching his or her stated conclusions and the medical rationale expressed in support of the physician's opinion.<sup>14</sup>

### ANALYSIS

Appellant claimed that on June 25, 2012 she sustained lumbar and bilateral shoulder injuries after moving chairs and disassembling a party tent at work. OWCP accepted that these events occurred at the time, place, and in the manner alleged. It denied the claim, however finding that appellant had submitted insufficient medical evidence establishing a causal relationship between the accepted work incidents and lumbar conditions diagnosed by her attending physicians.

Dr. Schmitz, an attending Board-certified orthopedic surgeon, provided a June 26, 2014 report diagnosing lumbar pain, bilateral knee pain, a left hip or thigh strain, and lumbar spondylosis with myelopathy at L3-4. He noted that appellant attributed her pain symptoms to "lifting/pulling/pushing tents" at work on June 25, 2012. However, Dr. Schmitz noted that while appellant "likely" sustained a lumbar strain, he could not "make a connection between her presentation today" and the diagnosed injuries. As he explained that he could not support causal relationship, his opinion cannot meet appellant's burden of proof.

Appellant also provided correspondence from her elected representatives. The critical issue in the claim is whether appellant established traumatic lumbar and shoulder injuries in the performance of duty. This is a medical issue, which must be established by medical evidence.<sup>15</sup> The status inquiry letters from appellant and her elected representatives are not medical evidence. Therefore, they cannot meet appellant's burden of proof.

Appellant also submitted copies of evidence previously of record. These reports were given merit consideration by OWCP prior to the June 10, 2014 decision. The Board's prior determinations explain why the medical evidence of record failed to meet appellant's burden of proof. Absent further merit review by OWCP, this subject matter is *res judicata*<sup>16</sup> and not subject to further consideration by the Board.

On appeal, appellant argues that OWCP has accepted that she disassembled party tents on June 25, 2012, and that the medical evidence supports her claim. As explained above, OWCP did accept that appellant moved or disassembled a tent at work on June 25, 2012. However, as also explained above, appellant's physicians failed to provide sufficient medical reasoning to meet her burden of proof to establish causal relationship. Her doctors did not explain how the accepted activity caused or aggravated any medical condition. Therefore, OWCP's

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<sup>14</sup> *Cecelia M. Corley*, 56 ECAB 662 (2005).

<sup>15</sup> *Supra* note 11.

<sup>16</sup> *See S.R.*, Docket No. 15-0927 (issued August 2, 2016); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

November 25, 2015 decision denying appellant's claim is proper under the law and facts of the case.

Appellant also argues that she should not be required to submit medical evidence due to the circumstances of her injuries and her educational and professional qualifications. The Board notes, however, that it is axiomatic that the employee must submit sufficient medical evidence to meet her burden of proof that she sustained an injury as claimed.<sup>17</sup> Appellant has not met her burden of proof as she failed to submit sufficient medical evidence explaining how and why the accepted work incident of disassembling tents and moving furniture on June 25, 2012 caused or aggravated any medical condition.

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 not met her burden of proof to establish lumbar and bilateral shoulder injuries causally related to June 25, 2012 employment incidents.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 25, 2015 is affirmed.

Issued: September 15, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>17</sup> *Id.*