



## **ISSUES**

The issues are: (1) whether appellant met his burden of proof to establish injuries causally related to the accepted November 3, 2014 employment incident; and (2) whether OWCP properly denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On November 4, 2014 appellant, then a 50-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on November 3, 2014, he injured his lower back and right leg. He stated that the injury occurred due to opening a door. A supervisor checked a box marked "no" indicating that appellant had not been injured in the performance of duty, noting that it occurred when he walked through a door to "punch in."

In a statement dated November 3, 2014, appellant explained that as he was entering the building through the door to punch in for work, the automatic door did not open. As he pushed the door to get in he felt a sharp pain in leg and lower back (right).

On November 4, 2014 Dr. Robert Lippe, a Board-certified orthopedic surgeon, examined appellant and diagnosed lower back pain and lumbar radiculitis. He noted that appellant was engaged in manual labor at the time of injury.

In a note dated November 5, 2014, Dr. Lippe diagnosed lumbar radiculitis and lower back pain, and recommended that appellant not return to work until further notice.

In a report dated November 19, 2014, Dr. Lippe noted that appellant's injury occurred on November 3, 2014 after the automatic door did not open, causing sudden pain.

By letter dated December 17, 2014, OWCP informed appellant of the evidence necessary to establish his claim. It noted that he had not submitted sufficient evidence to establish his claim, because his physicians had not provided a firm medical opinion based on clinical objective findings as to how a task such as opening an automatic door manually could directly cause or aggravate his diagnosed lumbar radiculitis. OWCP further noted that back pain was not a valid diagnosis, but instead a symptom of an underlying condition. It requested that appellant submit additional evidence and afforded him 30 days to do so.

On December 31, 2014 Dr. Lippe described appellant's injury as occurring when he pushed a button to open an automatic door. The door began to close, appellant attempted to stop the large door from closing with his arms full. When he tried to push it open he felt a sharp pain in his back. Dr. Lippe examined appellant and reviewed diagnostic reports, rendering diagnoses of lower back pain and lumbar radiculitis. He related that appellant was unable to return to work. Dr. Lippe opined that the incident caused appellant's injuries as the automatic door closed against him while he was walking through it.

In a report dated December 31, 2014, Dr. Seth A. Grossman, a Board-certified orthopedic surgeon, reviewed a magnetic resonance imaging (MRI) scan of appellant's lumbar spine, noting

right-sided severe nerve root impingement at L3-5 and severe right leg radiculopathy. He recommended operative decompression to relieve appellant's pain.

On January 7, 2015 Dr. Grossman opined that appellant sustained a work injury on November 3, 2014 when he strained his back opening a large automatic door. He noted immediate pain, which became very severe over the next hour. Dr. Grossman related that appellant had not yet returned to work.

By decision dated January 23, 2015, OWCP denied appellant's claim for compensation. It accepted that the incident occurred as alleged. OWCP noted that appellant had provided reports from physicians containing a valid diagnosis of lumbar radiculopathy, but that no reports had been received containing a well-reasoned medical opinion based on objective findings as to how the incident of November 3, 2014 caused or aggravated this diagnosis. As such, it denied his claim because he had not submitted sufficient evidence to establish a causal relationship between his diagnosed lumbar radiculopathy and the accepted work incident of November 3, 2014.

On November 2, 2015 appellant, through counsel, requested reconsideration of OWCP's January 23, 2015 decision. With the reconsideration request, appellant submitted a September 10, 2015 report from Dr. Lippe. Dr. Lippe related that on November 3, 2014, appellant pushed a button to open an automatic door and while walking through, the door malfunctioned and began to close and struck him. Appellant attempted to stop the large door from closing with his arms full. When he tried to push it open he felt a sharp pain in his back causing sudden pain with increased pain down his right leg with a sensation of numbness. Dr. Lippe examined appellant and reviewed his history of treatment and diagnostic tests. He concluded that appellant sustained back injury causally related to the November 3, 2014 employment incident.

Appellant also submitted November 3, 2014 hospital records. These records, signed by Dr. Robert Rajkumar, Board-certified in internal medicine, related appellant's history of injury as he was pushing a heavy automatic door at work on that date and felt pain in the right low back. Appellant's diagnosis was noted as lumbar radiculopathy and low back and right thigh strain.

By decision dated January 29, 2016, OWCP reviewed the merits of appellant's claim and denied modification of its prior decision of January 23, 2015. In response to counsel's contention that the report of September 10, 2015 was sufficient to support appellant's claims, OWCP found that it included an inaccurate history of injury because no other evidence of record indicated that he had been struck by a door. OWCP further found that the September 10, 2015 report failed to explain how the event of November 3, 2014 biomechanically caused appellant's diagnosed injuries.

On February 8, 2016 appellant, through counsel, again requested reconsideration. With the request for reconsideration, appellant resubmitted the November 3, 2014 hospital records.

By decision dated June 22, 2016, OWCP denied appellant's request for reconsideration, noting that the November 3, 2014 reports were previously of record.

## LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA<sup>3</sup> 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>4</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>5</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.<sup>6</sup> 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.<sup>7</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>8</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>9</sup> An award of compensation may not be based on appellant's belief of causal relationship. 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 a causal relationship.<sup>10</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>11</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and

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<sup>3</sup> *Id.*

<sup>4</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364, 366 (2006).

<sup>5</sup> *S.P.*, 59 ECAB 184, 188 (2007); *Joe D. Cameron*, 41 ECAB 153, 157 (1989).

<sup>6</sup> *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

<sup>7</sup> *D.B.*, 58 ECAB 464, 466 (2007); *David Apgar*, 57 ECAB 137, 140 (2005).

<sup>8</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734, 737 (2008); *Bonnie A. Contreras*, *supra* note 4.

<sup>9</sup> *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>10</sup> *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>11</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

compensable employment factors.<sup>12</sup> 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.<sup>13</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that the medical evidence submitted by appellant is insufficient to establish that the accepted incident of November 3, 2014 caused an injury.

Appellant submitted several reports containing descriptions of the incident, along with medical opinions as to the cause of his diagnosed lumbar radiculopathy. On December 31, 2014 Dr. Lippe described appellant's injury as occurring when appellant pushed a button to open an automatic door. Appellant attempted to stop the large door from closing with his arms full, when he tried to push it open he felt a sharp pain in his back. Dr. Lippe opined that appellant sustained injury when the automatic door closed against him while appellant was walking through it. In a September 10, 2015 report, he stated, that appellant's injury occurred when he was struck by the malfunctioning door.

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>14</sup> Dr. Lippe's initial report of December 31, 2014 noted a history of injury consistent with appellant's allegation that he sustained sharp back pain when he pushed the door to keep it from closing on him. His September 10, 2015 report does not provide a consistent history of injury as it relates that appellant sustained injury when the door struck him. It is unclear, based on these reports, whether Dr. Lippe believed that it was the door closing on appellant, or whether it was appellant later pushing on the door to open it that caused his diagnosed lumbar radiculopathy. Further, he does not provide a sufficient biomechanical explanation of how appellant's allegation that his attempt to stop the door from closing would have caused his lumbar radiculopathy.<sup>15</sup> Lacking such an explanation, Dr. Lippe's reports are insufficient to establish a causal relationship between the events of November 3, 2014 and his diagnosed condition.

On January 7, 2015 Dr. Grossman noted that appellant sustained a work injury on November 3, 2014 when he strained his back opening a large automatic door, and immediately noticed pain. While his history of injury is consistent with appellant's allegations, he provided no medical rationale to explain how physiologically this action would have caused the diagnosed lumbar radiculopathy. Without explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed conditions, Dr. Grossman's opinion

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<sup>12</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

<sup>13</sup> *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

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

<sup>15</sup> *E.E.*, Docket No. 15-0073 (issued March 9, 2015).

is of limited probative value.<sup>16</sup> As appellant has not submitted any sufficiently rationalized medical evidence to support his allegation that he sustained an injury causally related to a work-related incident on November 3, 2014, he has not met his burden of proof to establish his claim.

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.

### **LEGAL PRECEDENT -- ISSUE 2**

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.<sup>17</sup> Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

OWCP issued a January 29, 2016 decision finding that appellant had not submitted sufficient medical evidence to establish a causal relationship between the accepted employment incident on November 3, 2014 and his diagnosed conditions. On February 8, 2016 appellant, through counsel, requested reconsideration. With the request, he resubmitted November 3, 2014 hospital records.

As noted above, the Board does not have jurisdiction over the merits of the January 6, 2015 decision. The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of his claim. In his December 22, 2015 request for reconsideration, he did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(3).

The underlying issue is whether appellant has submitted sufficient evidence to establish a causal relationship between an employment incident on November 3, 2014 and his diagnosed conditions. A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, but appellant did not submit any such evidence in this case. The only evidence submitted by appellant on reconsideration of the January 29, 2016 decision were the hospital records dated November 3, 2014. This evidence was previously of record. Evidence or

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<sup>16</sup> *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

<sup>17</sup> 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

<sup>18</sup> *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

argument that repeats or duplicates evidence previously of record does not constitute a basis for reopening a case.<sup>19</sup>

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish injuries causally related to a November 3, 2014 employment incident. The Board further finds that OWCP properly denied appellant's request for review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 22 and January 29, 2016 are affirmed.

Issued: February 3, 2017  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>19</sup> *J.M.*, Docket No. 15-1537 (issued November 12, 2015).