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

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| **T.G., Appellant** | ) | |
| **and** | ) | **Docket No. 17-0632** |
| | ) | **Issued: July 26, 2017** |
| **DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION, Billings, MT, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On January 27, 2017 appellant filed a timely appeal from a December 9, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 an injury on August 11, 2016 causally related to the accepted employment incident.

### ***FACTUAL HISTORY***

On August 19, 2016 appellant, then a 50-year-old engineering equipment operator, filed a traumatic injury claim (Form CA-1) alleging that, on August 11, 2016, he injured his back when he bent down to place packing paper into a trash can. He did not stop work.

[1] 5 U.S.C. § 8101 *et seq*.

In a report dated September 14, 2016, Dr. Paul J. Miller, a Board-certified osteopath, related appellant's date of injury as August 11, 2016. He examined appellant, noted back pain, and diagnosed foraminal stenosis of the lumbosacral region, and L5-S1 degenerative disc disease with neural foraminal stenosis and L5 radiculopathy bilaterally, greater on the right. Dr. Miller related that appellant reported his condition had been present for a number of years, dating back to approximately three years earlier when he fell at work. He further noted that in July 2016 appellant bent over to throw something into the trash, which aggravated his existing condition.

On September 14, 2016 Dr. Miller interpreted the results of an x-ray of appellant's lumbar spine. He noted no abnormalities except a slight listhesis at L5-S1 with disc collapse.

By letter dated October 27, 2016, OWCP informed appellant of the evidence needed to establish his claim. It noted that he had not submitted sufficient factual and medical evidence to establish his claim, and afforded him 30 days to submit additional evidence.

OWCP thereafter received additional medical evidence. In a diagnostic report dated July 7, 2016, Dr. James T. Harris, Board-certified in occupational medicine, examined the results of a magnetic resonance imaging (MRI) scan of appellant's lumbar spine. He stated impressions of mild, worsening degenerative disease with new and increasing disc bulges. Dr. Harris noted evidence of an annular tear or fissure in the posterior margin of the L5-S1 disc, along with mild narrowing of the spinal canal at L3-4 and multilevel foraminal narrowing with mild left and moderate right neural foraminal narrowing at L5-S1.

In a report dated November 4, 2016, Dr. Miller followed up with appellant after an epidural steroid. He noted that after the injection on October 14, 2016 appellant's pain did not resolve, but changed with constant but intermittent levels of intensity. Dr. Miller assessed appellant with lumbar spinal stenosis.

By decision dated December 9, 2016, OWCP denied appellant's claim for compensation. It accepted that appellant had established that the incident occurred as alleged, but found that he had not submitted any rationalized medical evidence to establish causal relationship between the incident of August 11, 2016 and his diagnosed conditions.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[2] has the burden of proof to establish 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[3] was sustained in the performance of

[2] *Id*.

[3] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4]

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. A fact of injury determination is based on two elements. 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.[5]

The claimant has the burden of proof to establish 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.[6] 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 causal relationship.[7]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[8] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and compensable employment factors.[9] 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.[10]

## ***ANALYSIS***

OWCP accepted that on August 11, 2016 appellant sustained a back injury as a result of putting packing paper into a trash can. The Board finds that appellant has not submitted medical

[4] *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[5] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

[6] *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

[7] *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

[8] *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).

[9] *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

[10] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

evidence sufficient to establish that the August 11, 2016 incident caused or aggravated his diagnosed foraminal stenosis of the lumbosacral region, and L5-S1 degenerative disc disease with neural foraminal stenosis and L5 radiculopathy bilaterally.

In support of his claim, appellant submitted several reports from Dr. Miller. In a report dated September 14, 2016, Dr. Miller diagnosed foraminal stenosis of the lumbosacral region, L5-S1 degenerative disc disease with neural foraminal stenosis and L5 radiculopathy. He noted that appellant reported that his condition had been present for a number of years, dating back to approximately three years earlier when he fell at work. While Dr. Miller related appellant's date of injury as August 11, 2016, he further noted that in July 2016 appellant bent over to throw something into the trash, which aggravated his existing condition. In his November 4, 2016 report, Dr. Miller diagnosed lumbar spinal stenosis. These reports, while probative on the issue of appellant's diagnosis, do not contain a sufficient biomechanical explanation of how the event of August 11, 2016 caused or aggravated these conditions. This is especially important given appellant's history of preexisting degenerative lumbar disease.[11]

The record is devoid of a rationalized opinion from a qualified physician on the issue of the causal relationship between appellant's lower back conditions and the incident of August 11, 2016. While Dr. Miller recounted appellant's recollection of a past history of back conditions, along with an incident in July 2016 similar to the incident of August 11, 2016, he did not offer a rationalized medical opinion, as to the cause of appellant's conditions.[12]

OWCP also received several diagnostic reports. In a July 7, 2016 report, Dr. Harris reviewed appellant's MRI scan and related impressions of mild, worsening degenerative disease with new and increasing disc bulges, annual tear or fissure in the posterior margin of the L5-S1 disc, along with mild narrowing of the spinal canal at L3-4 and multilevel foraminal narrowing with mild left and moderate right neural forminal narrowing at L5-S1. The Board notes that this report predates the August 11, 2016 employment incident. In a September 14, 2016 report, Dr. Miller interpreted an x-ray of appellant's lumbar spine and noted a slight listhesis at L5-S1 with disc collapse. The Board has held that diagnostic reports are of limited probative value regarding the issue of causal relationship as they provide no opinion on the cause of the diagnosed conditions.[13]

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.[14]

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

[11] *W.N.*, Docket No. 16-1722 (issued March 22, 2017).

[12] *Supra* note 10.

[13] *M.S.*, Docket No. 16-1362 (issued December 7, 2016).

[14] *Supra* note 11.

sufficient to establish causal relationship.[15] As such, the Board finds that appellant did not submit sufficient evidence to establish his claim for a work-related traumatic injury in the performance of duty on August 11, 2016. He did not submit a clear and rationalized opinion from a qualified physician relating his diagnosed lower back conditions to the incident of August 11, 2016.

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 his burden of proof to establish an injury on August 11, 2016 causally related to the accepted employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 9, 2016 is affirmed.

Issued: July 26, 2017
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

[15] *J.S.*, Docket No. 16-1769 (issued May 24, 2017).