



Counsel contends on appeal that appellant has established that the employment incident occurred as alleged.

### **FACTUAL HISTORY**

On May 12, 2015 appellant, then a 57-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that he sustained a lower back strain and tightness in his legs and ankles after lifting a large number of milk crates on May 8, 2015.

The employing establishment provided appellant with an authorization for examination or treatment (Form CA-16) and indicated that on May 8, 2015 appellant was lifting milk cartons within the walk-in refrigerator and injured his shoulder. It indicated that the milk cartons weighed approximately 50 pounds. On the reverse side of the claim form, appellant's physician, Dr. Amir Herman, an osteopath, indicated that appellant was lifting heavy milk cartons, weighing 50 pounds and experienced pain in his back radiation down his left leg. He reviewed diagnostic testing and found degenerative disc disease of the lumbosacral spine, and sciatica. Dr. Herman indicated by checking a box marked "yes" that appellant's condition was caused or aggravated by work activity. He also noted that appellant had no pain prior to lifting.

In a letter dated June 5, 2015, OWCP noted that when appellant's claim was received, it appeared to be a minor injury that resulted in no lost time from work. Based on this, payment of a limited amount of medical expenses was approved, but the merits of the claim were not considered. OWCP reopened appellant's claim because he had not returned to full-duty work. It requested additional factual and medical evidence in support of appellant's claim and afforded appellant 30 days to respond.

Dr. Herman completed a note on May 13, 2015 and reported that appellant was lifting heavy objects at work and developed low back pain radiating down his right leg. X-rays demonstrated severe degenerative disc disease at L4-5 and L5-S1. Dr. Herman diagnosed lumbago with sciatica, and muscle spasm. He provided work restrictions. Dr. Herman completed a form report on May 26, 2015 and diagnosed sciatica, backache, and muscle spasm. On June 11, 2015 he found that appellant had significant pain in his legs and paresthesias bilaterally from his buttocks to his calves. Dr. Herman again diagnosed lumbago with sciatica, muscle spasm, and lower extremity paresthesias.

Appellant provided a narrative statement on June 12, 2015 and reported that on May 8, 2015 he was working the walk-in refrigerator unwrapping milk. He indicated that the employing establishment received an unusually large milk order and that he had to rotate the milk that was already in the refrigerator. This task involved a lot of bending, stooping, and twisting. Appellant reported that the milk cartons weighed more than 40 pounds each and he moved between 35 and 40 cartons. Upon leaving the refrigerator, appellant's supervisor noted that he was limping and directed him to medical treatment. Appellant listed his symptoms as tightness in his back, pains down his leg, limping, and numbness in his leg.

In a decision dated July 8, 2015, OWCP denied appellant's traumatic injury claim finding that he had not submitted sufficient medical evidence to establish causal relationship between his diagnosed conditions of lumbar strain and degenerative disc disease and his accepted employment incident. On July 21, 2015 it modified the July 8, 2015 decision finding that

appellant had not submitted medical evidence sufficient to explain how the accepted employment incident caused or affected his condition.<sup>3</sup>

In a note dated July 1, 2015, Dr. Herman reported that appellant's pain increased when he returned to work. He noted that appellant underwent a magnetic resonance imaging (MRI) scan on June 19, 2015 which demonstrated degenerative disc disease, and disc herniation.

Dr. Joseph T. Sanelli, an osteopath, examined appellant on July 6, 2015 due to reports of constant lumbar pain and stiffness with radiation into the bilateral lower extremities. He attributed these conditions to a work-related injury on May 8, 2015 when appellant was moving 40 crates of milk weighing 45 pounds each.

On July 9, 2015 Dr. Herman again diagnosed lumbago with sciatica, spasm of muscle, and herniated lumbar disc. In a note dated July 16, 2015, he disagreed with OWCP's decision and noted that appellant did not have any pain or discomfort prior to his workplace injury, but that since the injury appellant has had pain in his buttocks and leg. Dr. Herman opined that causality had been established. He noted that, although appellant had preexisting evidence of degenerative disc disease of the lumbar spine, appellant was not in any pain at the time of the workplace incident and that subsequent to the incident appellant had unrelenting pain.

Dr. Herman completed a note on August 4, 2015 and again diagnosed lumbago with sciatica, muscle spasm, and herniated lumbar disc. On September 2, 2015 Dr. Sanelli examined appellant and diagnosed lumbar disc displacement with myelopathy, discogenic syndrome, and lumbar myofascial. He reviewed appellant's June 19, 2015 MRI scan and found multilevel degenerative changes with stenosis and a small herniated disc at L4-5. Dr. Sanelli opined that appellant was temporarily totally disabled. In a note dated October 13, 2015, he diagnosed degenerative disc disease of the lumbar spine, lumbar disc displacement, lumbar discogenic syndrome, lumbar facet syndrome, and sciatica.

Dr. Herman completed a narrative report on November 10, 2015 and described appellant's history of lifting heavy objects at work on May 8, 2015. He noted, "[Appellant] developed low back pain and pain radiating down his right leg upon lifting the objects." Dr. Herman again reported that appellant was not in any pain or discomfort prior to lifting at work, and since that injury was having pain in the buttock and leg. He opined, "I believe that the patient's causality HAS indeed been established as although he had preexisting evidence of [degenerative disc disease] of the [lumbosacral] spine, he was not in any pain at the time of the workplace incident, and subsequent to the incident he has had nonrelenting pain." (Emphasis in the original.)

In a report dated October 22, 2015, Dr. Sanelli indicated that appellant reported a work-related injury on May 8, 2015 when he sustained the immediate onset of back pain after moving 40 crates of milk weighing 45 pounds each. He reviewed appellant's June 19, 2015 MRI scan and found multilevel degenerative changes, disc bulges, and stenosis as well as a herniated disc at L4-5. Dr. Sanelli concluded, "It is my medical opinion that the injuries and disability, as so

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<sup>3</sup> Appellant requested a telephonic hearing on July 15, 2015 from OWCP's Branch of Hearings and Review. Counsel withdrew this request on August 11, 2015. In a letter dated August 13, 2015, OWCP accepted counsel's request for withdrawal.

noted in this narrative report are causally related to the [w]orkers' [c]ompensation injury of May 8, 2015 that occurred while in the course of his federal employment....”

Counsel requested reconsideration on December 30, 2015 and April 15, 2016. On February 22, 2016 Dr. Sanelli indicated that appellant reported back pain. In a note dated March 25, 2016, Dr. Thomas J. Dowling, a Board-certified orthopedic surgeon, noted that appellant had returned to full duty. On May 25, 2015 Dr. Sanelli examined appellant and diagnosed lumbar disc displacement, lumbar discogenic syndrome, and lumbosacral degenerative disc disease.

By decision dated July 13, 2016, OWCP reopened appellant's claim for consideration of the merits and found that appellant had not established a causal relationship between his accepted employment incident and his diagnosed conditions and lumbar strain and degenerative disc disease.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, 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 was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is 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 upon a traumatic injury or an occupational disease.<sup>5</sup>

OWCP defines a traumatic injury as, “[A] condition of the body caused by a specific event or incident, or series of events or 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.”<sup>6</sup> To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether “fact of injury” has been established. 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>

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>9</sup> Medical rationale includes a physician's detailed opinion on

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<sup>4</sup> *Id.*; *Elaine Pendleton*, 41 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> 20 C.F.R. § 10.5(ee).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *J.Z.*, 58 ECAB 529 (2007).

<sup>9</sup> *T.F.*, 58 ECAB 128 (2006).

the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury causally related to a May 8, 2015 employment incident.

Appellant submitted consistent factual information that he lifted multiple milk crates in the performance of his job duties on May 8, 2015. He provided medical evidence diagnosing a variety of conditions including degenerative disc disease of the lumbosacral spine, and sciatica. Drs. Herman and Sanelli opined that appellant's diagnosed conditions were caused or aggravated by his lifting on May 8, 2015. In his October 22, 2015 report, Dr. Sanelli provided a history of injury and opined that appellant's diagnosed back conditions occurred while in the course of his federal employment. Dr. Herman repeatedly opined that appellant's diagnosed back conditions were caused by his lifting.

The Board, however, finds that both Dr. Herman's and Dr. Sanelli's reports lack the necessary medical reasoning to meet appellant's burden of proof. The Board has held that the mere manifestation of a condition during a period of employment does not raise an inference that there is a causal relationship between the condition and the employment. Neither the fact that the condition became apparent during a period of employment, nor the belief that the employment caused or aggravated a condition is sufficient to establish causal relationship.<sup>11</sup> Therefore, Dr. Herman's opinion regarding the temporal relationship between appellant's back conditions and his employment incident is insufficiently reasoned to meet appellant's burden of proof. Dr. Sanelli also failed to provide rationale explaining how the May 8, 2015 work incident caused or aggravated a diagnosed medical condition.<sup>12</sup>

Other medical evidence provided by appellant is of limited probative value as it does not specifically address whether the May 8, 2015 work incident caused or aggravated any particular medical condition.<sup>13</sup>

Without a medical report based on a complete factual history, a clear diagnosis, and an opinion supported by medical reasoning explaining how lifting on May 8, 2015 resulted in the

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<sup>10</sup> *A.D.*, 58 ECAB 149 (2006).

<sup>11</sup> *Supra* note 3.

<sup>12</sup> *See supra* note 10.

<sup>13</sup> *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

diagnosed conditions, appellant has not meet his burden of proof to establish a traumatic injury in the performance of duty.<sup>14</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 has not met his burden of proof to establish a traumatic injury causally related to a May 8, 2015 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 13, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief 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>14</sup> The Board notes that where 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 Form CA-16 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 OWCP terminates the authorization sooner. *See* 20 C.F.R. § 10.300(c). The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the CA-16 form issued in this case.