

Pursuant to the Federal Employees' Compensation Act³ (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 causally related to the accepted December 8, 2014 employment incident.

FACTUAL HISTORY

On December 8, 2014 appellant, then a 43-year-old textiles foreman, filed a traumatic injury claim (Form CA-1) alleging that, on that same date, he sustained an injury to his lower left back, hip, and groin area when lifting a filing cabinet off the floor causing severe back pain. He notified his supervisor, stopped work, and first sought medical treatment on the date of injury. On the reverse side of the claim form, appellant's supervisor controverted the claim stating that appellant had called in sick on December 1, 2014 because he injured his back over the weekend, prior to the December 8, 2014 employment incident.⁴

The employing establishment issued a properly completed authorization for examination, Form CA-16, dated December 8, 2014, which indicated that appellant was authorized to seek medical treatment related to the alleged December 8, 2014 injury with Dr. Brian Hart, Board-certified in family medicine. The description of injury was reported as lower back strain. On the reverse side of the Form CA-16 dated December 8, 2014, Dr. Hart completed the attending physician's report stating that appellant was lifting a file cabinet and experienced right groin pain and left lower back pain. He diagnosed right inguinal hernia and low back pain. Dr. Hart checked the box marked "yes" when asked if the condition was caused or aggravated by the employment activity and found appellant totally disabled through December 15, 2014.

In a December 31, 2014 medical report, Dr. Michael Hill, a treating physician, reported that appellant was referred for evaluation of a right inguinal hernia. He noted right inguinal pain for a little over a week since lifting something heavy. Dr. Hill noted abdominal pain and opined that appellant's injury could be a groin pull and not a hernia, which usually improved after a few weeks.

Dr. Hart provided disability slips and work capacity evaluation forms (OWCP-5c) pertaining to appellant's disability and work restrictions dated January 6 through April 8, 2015. Appellant was temporarily totally disabled from December 8 through January 20, 2015. He was released to light-duty work with restrictions on January 21, 2015.

Physical therapy notes from Adirondack Health dated January 7 through 16, 2015 were also submitted documenting appellant's treatment.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that appellant has seven other traumatic injury claims with a date of injury ranging from February 6, 2003 through August 20, 2013. The record before the Board contains no other information pertaining to appellant's prior claims.

On January 22, 2015 the employing establishment offered appellant a modified job within his physician's work restrictions. On January 23, 2015 appellant accepted the temporary position of mail room officer.

In a March 2, 2015 medical report, Dr. Hart reported follow-up for a December 8, 2014 workers' compensation injury. He noted appellant's continued low back pain radiating to the left leg. Dr. Hart noted complaints of low back pain with left radiculopathy which was not improving with home physical therapy exercises and medication. As such, he referred appellant for a lumbar spine magnetic resonance imaging (MRI) scan.

In a March 10, 2015 diagnostic report, Dr. Richard M. Moccia, Board-certified in internal medicine, reported that a lumbar spine MRI scan revealed subligamentous disc herniation at L3-4. The nerve roots were intact but there were degenerative changes in the facet joints producing a relative spinal stenosis at the L3-4 level. Dr. Moccia further noted midline bulge of the annulus fibrosis at L4-5 and degenerative disc disease at L3-4 and L4-5 with a schmorl's node along the inferior endplate of L5.

On April 10, 2015 Dr. Hart found appellant temporarily totally disabled beginning April 6, 2014.

By letter dated April 24, 2015, OWCP notified appellant that his claim was initially administratively handled to allow medical payments, as his claim appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of his claim had not been formally considered and his claim had been reopened for consideration of the merits because the medical bills had exceeded \$1,500.00. OWCP informed appellant that the evidence of record was insufficient to establish his traumatic injury claim. He was advised of the medical and factual evidence needed and instructed to submit a narrative medical report from his attending physician pertaining to his traumatic injury claim. Appellant was afforded 30 days to submit this additional evidence.

In an April 23, 2015 medical report, Dr. Fred P. Scialabba, a Board-certified neurosurgeon, related that appellant described a December 8, 2014 injury when he attempted to move a heavy cabinet and experienced pain in his back traveling to his left leg. He diagnosed leg pain, lower back pain, diabetes mellitus, and anxiety. Dr. Scialabba reported that appellant presented with a work-related injury that occurred at the employing establishment. Appellant's lumbar spine MRI scan was suggestive of a central disc bulge at L3-4 superimposed upon a congenitally narrow canal at L3-4. Dr. Scialabba noted that, while the MRI scan explained appellant's back pain, it did not explain his left leg pain. As such, he recommended an electromyography (EMG) and nerve conduction velocity (NCV) study of the left lower extremity.

In a May 14, 2015 narrative statement, appellant responded to OWCP's development letter and reported that he was injured on December 8, 2014 when attempting to lift a filing cabinet in the UNICOR Factory manager's office. He noted prior back pain which would normally dissipate with use of pain relievers after a few days. However, appellant had never experienced back pain like that on December 8, 2014, which remained for the next six months later. He further explained that he had back pain on December 1, 2014 but was back at work the

following day with no restrictions. Appellant reported that in the fall of 2014, he had an x-ray which revealed no abnormal findings. In March 2015, an MRI scan of the lumbar spine revealed an L3-4 herniation. Appellant reported that his supervisor would corroborate that he hurt his back at work when lifting the file cabinet, as well as his coworker, P.C., who witnessed the incident. In an accompanying May 1, 2015 witness statement, P.C. reported that, on December 8, 2014, he witnessed appellant try to move a horizontal filing cabinet which he dropped, complaining that he had hurt his back.

In a May 15, 2015 report, Dr. Hart diagnosed low back pain and herniated nucleus pulposus at L3-4. He responded to OWCP's April 24, 2015 development letter stating that he began treating appellant on December 8, 2014 for the reported back injury of the same date from lifting a file cabinet. Dr. Hart noted that appellant's low back pain into the left leg was worse with trunk motion. He attached findings from a March 10, 2015 MRI scan of the lumbar spine. Dr. Hart concluded that the work activity of lifting a file cabinet was causally related to appellant's bulging disc at the L3-4 level which was causing his symptoms.

By decision dated May 29, 2015, OWCP found that the December 8, 2014 incident occurred as alleged. It denied appellant's claim finding that the evidence of record failed to establish that his diagnosed condition was causally related to the accepted December 8, 2014 employment incident.

On June 29, 2015 appellant, through counsel, requested an oral hearing before an OWCP Hearing Representative. Counsel made reference to the medical reports previously submitted as having established that the injury was causally related to the December 8, 2014 employment incident.

In support of his claim, appellant submitted OWCP-5c forms from Dr. Hart finding him temporarily totally disabled beginning June 3, 2015.

By letter dated February 4, 2016, counsel for appellant noted submission of an October 5, 2015 report from Dr. Scialabba and a November 2, 2015 report from Dr. Hart in support of appellant's traumatic injury claim.⁵

In the November 2, 2015 medical report, Dr. Hart diagnosed low back pain unspecified laterally with sciatica present, unspecified. He described appellant's course of treatment beginning December 8, 2014. Dr. Hart reported that he continued to see him monthly for low back pain since April 30, 2015 since his condition remained unchanged since the initial December 8, 2014 employment incident.

A hearing was held on February 9, 2016. Appellant testified regarding the circumstances of his injury. He explained that he had previously missed some time from work due to back pain but nothing to the extent of the alleged December 8, 2014 injury. Appellant further reported never having experienced pain radiating to his left leg. The record was held open for 30 days.

⁵ The Board notes that the record did not contain Dr. Scialabba's October 5, 2015 report.

The employing establishment subsequently submitted a July 24, 2014 memorandum which indicated that appellant had informed his supervisor he could not come to work as he had blown out his back and needed to seek medical attention on June 23, 2014. A May 27, 2014 memorandum indicated that appellant called out of work on that day due to hurting his back.

In a March 14, 2016 memorandum, the employing establishment submitted videos of appellant participating in a parade in which he was shown to march, twist, and turn while playing a drum. It further made reference to appellant's history of back injuries where he had previously called off work prior to the alleged employment incident.

By letter dated March 7, 2016, counsel for appellant argued that the medical evidence of record established that the December 8, 2014 employment incident was causally related to appellant's back injury.

By decision dated April 4, 2016, an OWCP hearing representative affirmed the May 29, 2015 decision finding that the evidence of record failed to establish that appellant's injury was causally related to the accepted December 8, 2014 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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 filed within the applicable time limitation, that an injury was sustained while 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.⁷ 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.⁸

In order to determine whether an employee actually 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁹ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.¹⁰ The opinion of the physician must be

⁶ *Supra* note 3.

⁷ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁸ *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ *Elaine Pendleton*, *supra* note 7.

¹⁰ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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 the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹¹

ANALYSIS

OWCP accepted that the December 8, 2014 employment incident occurred as alleged. The Board finds that appellant has failed to submit sufficient medical evidence to support an injury causally related to the accepted December 8, 2014 employment incident.¹²

In support of his claim, appellant submitted medical reports dated December 8, 2014 through November 2, 2015 from Dr. Hart, his treating physician. Dr. Hart opined that the December 8, 2014 work activity of lifting a file cabinet was causally related to appellant's bulging disc at the L3-4 level. The Board finds that the opinion of Dr. Hart is not well rationalized. While Dr. Hart opined that appellant's injury was caused by the December 8, 2014 employment incident, he failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how lifting a cabinet would cause or aggravate appellant's back injury.¹³ In the December 8, 2014 Form CA-16, Dr. Hart checked a box "yes" indicating that the diagnosed conditions were causally related to the accepted employment incident. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.¹⁴ The Board notes that Dr. Hart failed to provide a detailed medical history or discuss appellant's preexisting back complaints prior to the December 8, 2014 employment incident. Dr. Hart failed to discuss whether appellant's preexisting condition had progressed beyond what might be expected from the natural progression of that condition.¹⁵ A well-rationalized opinion is particularly warranted in this case due to appellant's history of preexisting degenerative lumbar condition.¹⁶ Dr. Hart only generally repeated appellant's allegations pertaining to the employment incident. Such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how this physical activity actually caused the diagnosed condition.¹⁷ Without explaining how the

¹¹ *James Mack*, 43 ECAB 321 (1991).

¹² *See Robert Broome*, 55 ECAB 339 (2004).

¹³ *S.W.*, Docket 08-2538 (issued May 21, 2009).

¹⁴ *See P.S.*, Docket No. 17-0598 (issued June 23, 2017).

¹⁵ *R.E.*, Docket No. 14-868 (issued September 24, 2014).

¹⁶ *K.P.*, Docket No. 14-1330 (issued October 17, 2014).

¹⁷ *K.W.*, Docket No. 10-98 (issued September 10, 2010).

movements involved in the December 8, 2014 employment incident caused or contributed to the L3-4 herniated nucleus pulposus, Dr. Hart's opinion on causal relationship is of limited probative value.¹⁸

Dr. Scialabba's April 23, 2015 medical report is also insufficient to establish appellant's claim. He noted appellant's December 8, 2014 employment incident where he had attempted to move a heavy cabinet and experienced pain in his back and left leg. The Board notes, however, that Dr. Scialabba failed to provide a firm medical diagnosis. Dr. Scialabba diagnosed leg and lower back pain. The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis.¹⁹ Furthermore, Dr. Scialabba indicated that MRI scan imaging of appellant's lumbar spine was "suggestive" of a central disc bulge at L3-4 superimposed on a congenitally narrow L3-4 canal. He also noted additional objective testing was required *via* EMG/NCV studies of the left lower extremity. Thus, it appears that Dr. Scialabba did not have a complete medical background to provide an opinion on appellant's alleged injury and the cause of his condition.²⁰ As he failed to provide a clear diagnosis and did not adequately explain the cause of appellant's injury, his report is of no probative value.²¹

The remaining medical evidence of record is also insufficient to establish appellant's traumatic injury claim. Dr. Hill's December 31, 2014 report is speculative and of little probative value as he was uncertain if appellant was experiencing a right inguinal hernia or a groin pull. A medical opinion is of limited probative value if it provides only speculative support for causal relationship.²²

Dr. Moccia's March 10, 2015 report simply interpreted diagnostic studies pertaining to the lumbar spine with no firm medical diagnosis or opinion on the cause of his injury.²³

The physical therapy notes dated January 7 through 16, 2015 are also insufficient to establish appellant's claim as registered nurses, physical therapists, and physician assistants, are not considered physicians as defined under FECA. As such, their opinions are of no probative value.²⁴

¹⁸ See *L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

¹⁹ *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

²⁰ See *W.O.*, Docket No. 16-1502 (issued March 10, 2017).

²¹ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

²² See *D.H.*, Docket No. 17-0178 (issued May 10, 2017).

²³ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

²⁴ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation, as physical therapists are not considered physicians as defined under FECA).

The Board notes that there is no requirement that the federal employment be the only cause of appellant's injury. If work-related exposures caused, aggravated or accelerated appellant's condition, he is entitled to compensation.²⁵ However, an award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.²⁶ Appellant's honest belief that the December 8, 2014 employment incident caused his medical injury is not in question, but that belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship.²⁷

In the instant case, the record lacks rationalized medical evidence establishing a causal relationship between the December 8, 2014 employment incident and his diagnosed L3-4 herniated nucleus pulposus. Thus, appellant has failed to meet his burden of proof.²⁸

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's 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 causally related to the December 8, 2014 employment incident.

²⁵ See *Beth P. Chaput*, 37 ECAB 158, 161 (1985); S.S., Docket No. 08-2386 (issued June 5, 2008).

²⁶ *D.D.*, 57 ECAB 734 (2006).

²⁷ See *J.S.*, Docket No. 17-0507 (issued August 11, 2017).

²⁸ 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 terminated earlier by OWCP. See 20 C.F.R. § 10.300(c).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated April 4, 2016 is affirmed.

Issued: November 3, 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