

ISSUE

The issue is whether appellant met his burden of proof to establish an injury causally related to the accepted December 9, 2014 employment incident.

FACTUAL HISTORY

On January 6, 2015 appellant, then a 50-year-old certified respiratory therapist, filed a traumatic injury claim (Form CA-1) alleging that on December 15, 2014 he experienced pain in his lower back, left buttocks, left leg, and left foot while pushing a rolling computer cart. The claim form does not indicate whether he stopped work. On the reverse side of the claim form, the employing establishment controverted appellant's claim because he had not worked on that date.

Dr. Vito Loguidice, a Board-certified orthopedic surgeon, initially treated appellant and related in a December 16, 2014 report that appellant had complained of left leg pain for one week. He noted that appellant had a history of lumbar radiculopathy and a long-standing history of right hand numbness. Dr. Loguidice reviewed appellant's history and conducted an examination. He reported painful limited lumbar movement and spasm and positive straight leg raise testing on the left at 10 degrees. Dr. Loguidice diagnosed left lumbar radiculopathy with weakness. He recommended that appellant remain off work.

Appellant underwent a lumbar spine magnetic resonance imaging (MRI) scan by Dr. Joel Swartz, a Board-certified diagnostic radiologist, who provided a December 18, 2014 report. Dr. Swartz observed central herniation at L4-5 with right-sided bulging of the disc and central and left-sided herniation at L5-S1. He also indicated that desiccation was seen throughout appellant's lumbar disc spaces being most pronounced at the levels of L3-4 through L5-S1.

Dr. Loguidice continued to treat appellant and indicated in follow-up reports dated December 19, 2014 and January 8, 2015 that a lumbar MRI scan showed degenerative disc disease at L3-4, L4-5, and L5-S1 and herniation on the left side at L5-S1. He related appellant's complaints of left lower extremity pain and reported examination findings of weakness of the peroneals and hamstrings on the left. Straight leg raise testing was positive. Dr. Loguidice diagnosed herniated disc L5-S1 with left-sided radiculopathy and asymptomatic stenosis and degenerative disc disease at L4-5. He recommended that appellant remain off work and undergo an epidural steroid injection.

Appellant was examined in the employing establishment's employee health unit. In a January 6, 2015 handwritten examination note, a physician with an illegible signature related that appellant had been put out of work for three weeks due to an injury he sustained on December 15, 2014 at 9:00 p.m. in Building 135, Unit 2B. He described that appellant was pushing a computer cart when he felt pain in his lower back. The physician noted that appellant had a history of herniated disc problems and still treated with a chiropractor. He provided examination findings and diagnosed herniated lumbar disc (by history) and lumbar back strain.

In an attending physician's report (Form CA-20) dated January 13, 2015, Dr. Loguidice noted a date of injury of December 16, 2014. He provided examination findings and diagnosed

lumbar radiculopathy and stenosis. Dr. Loguidice checked a box marked “no” indicating that appellant’s condition was not work related. He noted that appellant was totally disabled from work beginning December 16, 2014 with an estimated return to work of February 2, 2015.

The employing establishment controverted appellant’s claim in a January 15, 2015 letter and asserted that according to his timecard he was not on duty on December 15, 2014. It also pointed out that a January 13, 2015 Form CA-20 indicated that his condition was not work related.

In a letter dated January 26, 2015, OWCP advised appellant that the evidence of record was insufficient to establish his claim. It requested that he provide further information to substantiate that the December 15, 2014 incident occurred as alleged and that he provide medical evidence to establish a diagnosed condition causally related to the alleged incident. Appellant was afforded 30 days to submit this additional evidence.

OWCP received additional medical evidence on February 23, 2015. In a report dated December 12, 2014, Dr. Richard Goga, Board-certified in emergency medicine, related in an examination note that appellant complained of left lower extremity pain, which worsened with movement and walking, that started three days ago. Upon physical examination, he observed no midline tenderness of appellant’s back and normal sensory examination. Straight leg raise testing was positive. Dr. Goga diagnosed sciatica.

Appellant also provided hospital records dated December 19, 2014 and January 12, 2015, which revealed that he had received epidural steroid injections for a diagnosis of lumbar disc herniation by Dr. Loguidice.

Dr. Loguidice continued to treat appellant. In a January 29, 2015 follow-up report, he noted that appellant had a herniated disc prior to this injury. Dr. Loguidice related that on December 9, 2014 around 9:00 p.m. appellant turned to the right while pushing a scanner at work and felt a pull in his back. He explained that appellant’s radiculopathy worsened and the herniated disc became symptomatic. Dr. Loguidice reported: “It is my opinion that it’s very clear that the accident at [appellant’s] work exacerbated his underlying disc herniation.” He diagnosed herniated disc L5-S1 and indicated that appellant was still unable to work.

On January 30, 2015, Rebecca Zeigler, a certified physician assistant, indicated that upon reviewing the examination notes, appellant’s first visit was on December 16, 2014, but the work injury occurred a week prior to the examination on December 9, 2014.

Appellant provided a narrative statement dated February 7, 2015, wherein he described that, on December 9, 2014 at approximately 9:00 p.m., he was doing a second round of treatments in Building 135. He explained that he was pushing a computer cart on wheels and made a sharp right turn when he felt a slight pull in his lower back. Appellant related that he was able to finish his rounds, but had a small discomfort in his lower back. He noted that, around 3:00 a.m., he woke up with a burning sensation from the lower part of the left side of his back all the way to his left calf muscle. Appellant indicated that on December 10, 2014 he telephoned M.P. his supervisor and informed her that he would not be able to come to work due to his back pain. He described the various medical treatments he had sought for his continuing lumbar pain.

Appellant reported that he was unable to remain sitting for a long period of time until January 6, 2015, at which point he was driven to the employee health unit where he filed the incident report. He explained that he mistakenly noted the wrong date of December “16,” 2014, instead of December 9, 2014, on the claim form. Appellant noted that he did not initially tell anyone at the time of the injury because he did not think it was a big deal. He asserted that he had not sustained any other injuries since this incident and that he had stayed home trying to recuperate as much as possible.

In a February 26, 2015 follow-up report, Dr. Loguidice related appellant’s continued complaints of back and leg pain and difficulty with standing, walking, bending, twisting, and lifting. Upon physical examination, he reported diminished repetitive toe rise on the left and positive straight leg raise testing at 60 degrees. Dr. Loguidice diagnosed left-sided radiculopathy secondary to herniated disc L5-S1. He indicated that appellant planned to proceed with surgery.

OWCP denied appellant’s claim in a decision dated March 2, 2015. It accepted that the employment incident occurred as alleged, but denied his claim because the medical evidence did not establish a diagnosed condition as a result of the accepted incident. OWCP further noted that the medical evidence did not contain a clear history of injury.

On April 2, 2015 OWCP received appellant’s request for a review of the written record before an OWCP hearing representative.

Appellant submitted a March 11, 2015 report by Dr. Justin Melia, a chiropractor, who related that appellant had been under his care for neck pain, low back pain with herniation, left leg pain, and knee pain since October 21, 2014 with diagnoses of cervicalgia, lumbago, segmental dysfunction, and joint stiffness. Dr. Melia noted that appellant had a preexisting lumbar spine herniation and explained that “pushing the computer cart at work made the herniation unstable and begin to swell.”

Dr. Loguidice continued to treat appellant and in a March 24, 2015 report described that on December 9, 2014 appellant was pushing a computer cart at work when he turned and felt pain in his back. He explained that appellant was not symptomatic and was able to function at work without any significant pain before the December 9, 2014 work injury and then became symptomatic as a result of the incident. Dr. Loguidice opined that all of the medical treatment appellant had received was a result of the December 9, 2014 injury. In an April 30, 2015 examination note, he indicated that appellant should proceed with surgery.

On June 2, 2015 appellant underwent lumbar discectomy surgery. The surgery was not authorized by OWCP.

Dr. Loguidice provided reports dated June 3 to July 16, 2015 and indicated that appellant was status post lumbar discectomy, but still complained of some low back pain and fatigue. He diagnosed herniated nucleus pulposus, lumbago, and status post discectomy. Dr. Loguidice noted that appellant was unable to work from June 15 to September 1, 2015.

By decision dated August 13, 2015, an OWCP hearing representative affirmed the March 2, 2015 decision with modification. She accepted that the medical evidence of record provided valid diagnoses of lumbar stenosis, lumbar radiculopathy, and lumbar herniated discs at

the L4-5 and L5-S1, but denied appellant's claim because the medical evidence of record failed to establish that his lumbar conditions were causally related to the accepted employment incident. The hearing representative further noted that he clarified the date of the employment incident as December 9, 2014.

In reports dated August 27, 2015 to January 14, 2016, Dr. Loguidice noted that appellant was status post discectomy and complained of mild left lateral thigh pain, back pain, fatigue, and stiffness. He reviewed appellant's history and conducted an examination. Dr. Loguidice reported no tenderness in appellant's lumbar spine. He related range of motion findings of full range and painless flexion and limited extension. Dr. Loguidice diagnosed status post discectomy L5-S1, lumbar herniated nucleus pulposus, and degenerative lumbar disc disease. He indicated that appellant was unable to work from August 27, 2015 until his next evaluation.

Appellant underwent a lumbar spine MRI scan by Dr. Joseph Estacio, an osteopathic physician specializing in radiology. Dr. Estacio provided a January 11, 2016 report. He noted multilevel disc disease and postsurgical changes, severe neural foraminal narrowing L4-5 on the right, moderate-to-severe neural foraminal narrowing L4-5 and L5-S1 on the left, and moderate neural foraminal narrowing L3-4 bilaterally.

On February 18, 2016 appellant, through counsel, requested reconsideration. He indicated that he was attaching a narrative report from Dr. Michael Cohen, an osteopathic physician specializing in orthopedic surgery, which explained the mechanism of injury to establish appellant's traumatic injury claim. Counsel asserted that even if Dr. Cohen's report was not found to be sufficient to meet appellant's burden of proof to establish his claim, it was sufficient to require further development of the medical evidence by referral for a second opinion evaluation.

Appellant provided a December 16, 2015 narrative report from Dr. Cohen, who accurately described that on December 9, 2014 appellant felt a pull in his lower back while pushing his computer on a cart. Dr. Cohen reviewed the medical treatment that appellant had received and related that he currently complained of lumbar spine pain and stiffness and left lower extremity radicular pain. He related appellant's physical examination findings and concluded that appellant had suffered a work-related injury on December 9, 2014 and had sustained significant musculoskeletal pathology to his lumbar spine. Dr. Cohen opined that "the competent producing factor of this claimant's permanent orthopedic impairments to the lumbar spine which includes a chronic post-traumatic lumbosacral strain and sprain, herniated discs L4-5 and L5-S1 with associated radiculopathy, the necessity for the lumbar discectomy as well as the postoperative sexual dysfunction is to be considered the work[-]related injury of December 9, 2104." He explained that appellant had a "torsional-type injury to his lumbar spine which on a more likely than not basis caused the disc herniations he sustained during the course of employment on December 9, 2014."

In a February 11, 2016 report, Dr. Steven Mazza, Board-certified in physical medicine and rehabilitation, related that he treated appellant for complaints of low back pain. He noted that appellant had a lumbar discectomy in June 2015 and, while appellant's left lower extremity radiculopathy had resolved, he still had persistent lower back pain. Upon physical examination, Dr. Mazza observed bilateral lumbar paraspinal tenderness of the lumbar spine. Range of motion

testing revealed painful and decreased extension and flexion. Dr. Mazza diagnosed degenerative lumbar disc, herniated nucleus pulposus, and lumbago. He noted that he discussed possible discogram surgery.

Appellant continued to receive medical treatment from Dr. Loguidice, who noted in reports dated March 17 and April 7, 2016 that appellant's lumbar discogram was negative. Dr. Loguidice provided physical examination findings and diagnosed de Quervain's disease tenosynovitis, herniated nucleus pulposus, and status post lumbar discectomy. In the April 7, 2016 report, he related that appellant's functional capacity evaluation (FCE) was consistent with sedentary work and provided a March 31, 2016 FCE report.

By decision dated May 2, 2016, OWCP denied modification of its August 13, 2015 decision. It found that the medical evidence of record was insufficient to establish that appellant's diagnosed lumbar conditions were causally related to the accepted December 9, 2014 employment incident. OWCP determined that the medical reports of Dr. Loguidice and Dr. Cohen provided no rationale explaining how the December 9, 2014 incident caused or contributed to appellant's lumbar condition.

On June 6, 2016 appellant, through counsel, requested reconsideration. He noted that he was including another report from Dr. Cohen, who provided additional explanation of the mechanism of how the accepted work factors contributed to appellant's lumbar condition and need for surgery.

Appellant submitted a June 6, 2016 letter from Dr. Cohen, who indicated that he reviewed OWCP's May 2, 2016 decision. He described the December 9, 2014 employment incident and the medical treatment appellant had received. Dr. Cohen related that, in an attempt to explain the mechanism of injury leading to appellant's exacerbation of lumbar spine pain due to disc pathology, he reviewed an article entitled "Body Mechanics of Lifting and Lower Back Pain," which noted that low back pain was caused by chemical and mechanical irritation of pain sensitive nerve endings and structures of the lumbar spine. He reported that appellant's work-related risk factors could lead to that, including heavy physical work, frequent bending, twisting, lifting, pulling, pushing, and repetitive work. Dr. Cohen noted that appellant had underlying disc pathology since the age of 15 and explained that an increase in spinal load would cause more nerve root impingement in someone with underlying pathology. He opined that, after reviewing appellant's history of pushing a computer cart, it was his opinion that this was sufficient to aggravate the underlying low back condition.

In a decision dated August 26, 2016, OWCP denied modification of its prior decision. It found that Dr. Cohen's opinion was not sufficiently rationalized to establish appellant's claim as he based his opinion on an article regarding repetitive and heavy physical work, not a traumatic injury. OWCP determined that the medical evidence of record was insufficient to establish that appellant's lumbar condition was causally related to the accepted December 15, 2014 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁴ including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁶ There are two components involved in establishing the fact of injury. 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.⁷ Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.⁹

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.¹⁰ 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.¹¹ The weight of the 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.¹²

³ *Id.*

⁴ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁷ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁸ *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹² *James Mack*, 43 ECAB 321 (1991).

ANALYSIS

Appellant alleged that on December 9, 2014 he injured his back when he pushed a computer cart and suddenly turned in the performance of duty. OWCP accepted that the employment incident occurred as alleged and found that the evidence confirmed a diagnosed back condition. It denied appellant's claim, however, finding insufficient medical evidence of record to establish that his back condition was causally related to the December 9, 2014 employment incident.

The Board finds that appellant has failed to meet his burden of proof to establish that his back condition resulted from the accepted employment incident.

Appellant was primarily treated by Dr. Loguidice, who provided attending physician's reports, examination notes, and narrative reports from December 16, 2014 to April 7, 2016. He initially noted a date of injury of December 16, 2014, but clarified in a January 29, 2015 report that appellant was injured on December 9, 2014 when he turned to the right while pushing a scanner at work. Dr. Loguidice related that appellant had a history of lumbar radiculopathy, herniated disc, and right hand numbness. In a December 19, 2014 report, he noted that a lumbar MRI scan showed degenerative disc disease at L3-4, L4-S1 and herniation on the left side at L5-S1. Dr. Loguidice provided physical examination findings and diagnosed herniated disc L5-S1 and degenerative disc disease at L4-5. In a January 13, 2015 Form CA-20, he checked a box marked "no" indicating that appellant's condition was not work related. In a January 29, 2015 report, Dr. Loguidice opined that "the accident at [appellant's] work exacerbated his underlying disc herniation." In a March 24, 2015 report, he noted that appellant became symptomatic after the December 9, 2014 work injury. Dr. Loguidice recommended that appellant remain off work.

Dr. Loguidice accurately described the December 9, 2014 work incident and diagnosed a back condition along with providing his opinion on causal relationship. He indicated in a January 13, 2015 Form CA-20 that appellant's back condition was not work related. In a January 29, 2015 report, Dr. Loguidice opined that the December 9, 2014 accident at work had exacerbated appellant's underlying disc herniation. In a March 24, 2015 report, he suggested that causal relationship was based on the fact that appellant's current back condition only became symptomatic after the December 9, 2014 work injury. The Board has held, however, that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without sufficient rationale, to establish causal relationship.¹³ For these reasons, Dr. Loguidice's reports are insufficiently rationalized to establish appellant's claim.

Dr. Cohen also treated appellant. In a December 16, 2015 narrative report, he accurately described that on December 9, 2014 appellant felt a pull in his lower back when he pushed a computer on a cart at work. Upon examination of appellant's lumbar spine, Dr. Cohen observed left-sided paraspinal muscle spasm and limited range of motion. Straight leg raise testing and Lasegue signs were positive. Dr. Cohen diagnosed chronic post-traumatic traumatic strain and sprain of the lumbar spine, lumbar radiculopathy, herniated disc L4-5 and L5-S1, status post L5-S1 discectomy. He reported that the "competent producing factor of this claimant's permanent

¹³ *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

orthopedic impairments to the lumbar spine ... is to be considered the work-related injury of December 9, 2014.” Dr. Cohen explained that appellant had a “torsional-type injury” during the course of employment on December 9, 2014 that “on a more likely than not basis” caused appellant’s lumbar disc herniations. He further noted in a June 6, 2016 letter that he reviewed an article about the cause of low back pain. Dr. Cohen related that appellant had underlying disc pathology since the age of 15 and indicated that an increase in spinal load would cause more nerve root impingement in someone with underlying pathology. He reported that after reviewing appellant’s history of pushing a computer cart, this was sufficient to aggravate the underlying low back condition.

Although Dr. Cohen provided an affirmative opinion on causal relationship, he did not support his opinion with any medical rationale. He failed to explain the mechanism of injury of how pushing a computer cart and suddenly turning at work caused or contributed to appellant’s back condition.¹⁴ The need for rationalized medical opinion based on medical rationale is especially important in this case as appellant had a preexisting lumbar condition. In light of this prior injury, rationalized medical evidence is particularly important to explain how his back condition resulted from the December 9, 2014 work incident, and not his preexisting back condition. The description of a “torsional-type injury” did not explain how the accepted December 9, 2014 employment incident caused or contributed to appellant’s lumbar condition.¹⁵ The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁶ Because Dr. Cohen has not provided such medical rationale to support his opinion on causal relationship, his reports are insufficient to establish appellant’s claim.

Appellant was also treated in the emergency room. In a December 12, 2014 emergency room report, Dr. Goga treated appellant for complaints of left lower extremity pain. He provided examination findings and diagnosed sciatica. The Board finds that Dr. Goga did not provide an opinion as to whether the December 9, 2014 employment incident caused or contributed to appellant’s diagnosed back condition.¹⁷

Similarly, the diagnostic scan reports from Dr. Swartz, Dr. Estacio, and Dr. Mazza did not offer any opinion or explanation on the cause of appellants back condition. They provided examination and diagnostic findings, which revealed herniated discs and degenerative changes in appellant’s lumbar spine. None of the physicians, however, opined on whether the December 9, 2014 work incident caused or contributed to his back condition. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee’s condition is of

¹⁴ See *B.T.*, Docket No. 13-0138 (issued March 20, 2013).

¹⁵ See *L.R.*, Docket No. 16-0736 (issued September 2, 2016).

¹⁶ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, *supra* note 13.

¹⁷ A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale. *Id.*

limited probative value on the issue of causal relationship.¹⁸ These reports, therefore, are insufficient to establish appellant's claim.

Appellant was also examined in the employing establishment's health unit on January 6, 2015 by a physician with an illegible signature. The Board has previously held, however, that reports that are unsigned or that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.¹⁹ Likewise, the January 30, 2015 physician assistant's report lacks probative value because physician assistants are not considered physicians as defined under FECA and their medical opinions regarding diagnosis and causal relationship are of no probative value.²⁰

Dr. Melia, a chiropractor, also treated appellant. In a March 11, 2015 report, he noted diagnoses of cervicalgia, lumbago, segmental dysfunction, and joint stiffness. Dr. Melia explained that pushing the computer cart at work made appellant's preexisting lumbar spine herniation unstable and begin to swell. Section 8101(2) of FECA, however, provides that the term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.²¹ As Dr. Melia did not provide a diagnosis of subluxation, his opinion on causal relationship is of no probative value.

On appeal, counsel contends that Dr. Cohen adequately explained the mechanism of injury, specifically the torsional forces that caused appellant's lumbar spine injury, and established that the accepted work factors caused or contributed to appellant's diagnosed condition. Counsel further argues, in the alternative, that even if Dr. Cohen's reports were insufficient to meet appellant's burden of proof, there was sufficient evidence to require further development of appellant's claim by referral for a second opinion evaluation. As noted above, however, Dr. Cohen's report is of diminished probative value and is insufficient to meet appellant's burden of proof to establish causal relationship or to require further development of the medical evidence. The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.²² 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 are sufficient

¹⁸ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹⁹ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

²⁰ See *David P. Sawchuk*, 57 ECAB 316, 320, n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); section 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See also *R.M.*, Docket No. 16-1845 (March 6, 2017).

²¹ 5 U.S.C. § 8101(2).

²² *W.W.*, Docket No. 09-1619 (June 2, 2010); *David Apgar*, *supra* note 8.

to establish causal relationship.²³ The Board finds, therefore, that appellant failed to meet his burden of proof.

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 back injury causally related to the accepted December 9, 2014 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2016 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

²³ *E.J.*, Docket No. 09-1481 (issued February 19, 2010).