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

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| **A.S., Appellant** | ) | |
| **and** | ) | **Docket No. 17-0868** |
| | ) | **Issued: October 19, 2017** |
| **DEPARTMENT OF JUSTICE, MARSHALS SERVICE, Covington, KY, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant[1]
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

### ***JURISDICTION***

On March 13, 2017 appellant, through counsel, filed a timely appeal from a January 30, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

### ***ISSUE***

The issue is whether appellant met his burden of proof to establish a lumbar injury causally related to the accepted May 15, 2015 employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On May 18, 2015 appellant, then a 38-year-old deputy marshal, filed a traumatic injury claim (Form CA-1), alleging that, on May 15, 2015, while lifting and carrying cases of ammunition, he strained his groin area. He did not stop work.

Appellant was treated by Dr. Dean D. Skinner, a chiropractor, from May 18 to July 20, 2015, for low back pain. Dr. Skinner reported that he sustained a work injury on May 15, 2015 while he was lifting and carrying boxes of ammunition at work.

Dr. Onassis A. Caneris, a Board-certified neurologist, examined appellant on May 20, 2015 for right lower abdominal and right groin pain. Appellant reported an onset a year ago of back pain that radiated to the inguinal area and posterior aspect of the hip. He was treated conservatively, but continued to have refractory problematic pain which interfered with his ability to work. Appellant related this pain to a work-related incident. Dr. Caneris noted findings on examination of normal range of motion of the musculoskeletal spine, slightly positive reverse straight leg raise on the right, intact motor strength in the upper and lower extremities, intact sensation, and intact reflexes. He diagnosed lumbar spondylosis, degenerative disc disease, and lumbar radiculopathy. Dr. Caneris recommended right-sided, two-level transforaminal injections at L4 and L5 and stretching and stabilization of the quadratus and psoas with L4 and L5 techniques.

Appellant was examined by Dr. G. Stephen Cleves, a Board-certified internist, on May 22, 2015, for low back pain and stiffness with an onset of one month. Dr. Cleves noted findings of decreased range of motion of the musculoskeletal spine. He diagnosed backache, unspecified. In a June 10, 2015 addendum, Dr. Cleves noted that appellant had a history of ongoing back pain and on May 15, 2015 he aggravated his back and pulled something in his groin area while lifting boxes at work. He noted that appellant was scheduled for a steroid injection.

By letter dated February 8, 2016, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment incident. It requested that the physician's opinion be based upon the history and date of injury he had provided to the physician. OWCP noted that medical evidence must be submitted by a qualified physician and notified appellant of the circumstances under which a chiropractor can be considered a physician under FECA. Appellant did not submit additional evidence responsive to the specific requests contained within OWCP's development letter.

In a March 15, 2016 decision, OWCP denied appellant's claim for compensation because the medical evidence of record was insufficient to establish a medical condition causally related to the accepted work incident.

On March 21, 2016 appellant through counsel requested a telephonic hearing which was held on December 19, 2016.

On August 24, 2016 Dr. Mathew A. Hazzard, a Board-certified neurosurgeon, performed a bilateral percutaneous sacroiliac joint fixation, intraoperative fluoroscopy, and intraoperative neuromonitoring. He diagnosed bilateral sacroiliac joint fixation.

Appellant was treated by Dr. Neil Allen, a Board-certified neurologist, on November 9, 2016, for back pain. Dr. Allen reported that appellant had sustained a low back injury and groin pain as a result of repetitive lifting and carrying boxes of ammunition. Appellant noted current symptoms of right-sided back pain, groin pain, numbness and tingling down the right leg, and hypersensitivity of the right foot. Dr. Allen noted appellant's history was significant for a low back injury in 2007, which was refractive to conservative measures and he eventually required a lumbar fusion at L5-S1 in 2008. He diagnosed strain/sprain of the lumbar spine. Dr. Allen noted the repetitive, forceful muscle contraction required to perform the task described by appellant on May 15, 2015, resulted in the overstretching and microscopic tearing of the ligaments and musculature of the lumbar spine resulting in the injury. He indicated that the surrounding soft tissues react and became inflamed, painful and stiff, restricting both functional and mobility within the affected area with radiating symptoms to the buttocks and thigh. Dr. Allen opined that appellant's injury resulting from the repetitive occupational trauma on May 15, 2015 was both reasonable and expected based upon the mechanism described by appellant and the medical records. Appellant also submitted physical therapy notes.

In a decision dated January 30, 2017, an OWCP hearing representative affirmed the decision dated March 15, 2016.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[3] 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 of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. 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.[4]

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. There are two components involved in establishing 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. Second, the employee must submit medical evidence sufficient to establish that the employment incident caused a personal injury.[5]

[3] *Id*.

[4] *Gary J. Watling*, 52 ECAB 357 (2001).

[5] *T.H.*, 59 ECAB 388 (2008).

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[6]

## ***ANALYSIS***

It is undisputed that on May 15, 2015 appellant was lifting and carrying cases of ammunition. However, he has failed to submit sufficient medical evidence to establish that his diagnosed medical condition is causally related to the May 15, 2015 employment incident.

Appellant was treated by Dr. Allen on November 9, 2016. He reported sustaining a low back injury as a result of repetitive lifting and carrying boxes of ammunition. Dr. Allen noted that appellant's history was significant for a low back injury in 2007, which required a 2008 lumbar fusion of L5-S1. He diagnosed strain/sprain of the lumbar spine and opined that the repetitive, forceful muscle contraction required to perform the task described by appellant on May 15, 2015 resulted in the overstretching and microscopic tearing of the ligaments and musculature of the lumbar spine. Dr. Allen indicated that appellant's injury resulted from the repetitive occupational trauma on May 15, 2015 was both reasonable and expected based upon the mechanism described by appellant and the medical records. However, he merely repeated the history of injury as reported by appellant without providing his own opinion explaining how particular work activities on May 15, 2015 caused a diagnosed condition. To the extent that Dr. Allen is providing his own opinion, he failed to provide sufficient rationale regarding the causal relationship between appellant's low back condition and the accepted work incident.[7] Therefore, this report is insufficient to meet his burden of proof.

Similarly, in a report dated May 20, 2015, Dr. Caneris treated appellant for right lower abdominal and right groin pain. Appellant reported a first onset of pain over a year earlier and believed that his condition related to a work-related incident. Dr. Caneris diagnosed lumbar spondylosis, degenerative disc disease, and lumbar radiculopathy. As with Dr. Allen, Dr. Caneris also merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether his condition was work related. To the extent that Dr. Caneris is providing his own opinion, he did not provide a rationalized opinion regarding the causal relationship between appellant's low back condition and the May 15, 2015 work activities.[8]

Appellant submitted a May 22, 2015 report from Dr. Cleves who treated him for low back pain and stiffness. Dr. Cleves diagnosed backache, unspecified. In an addendum note dated June 10, 2015, he noted that appellant had a history of back pain that was ongoing and on

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

[7] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[8] *Id.*

May 15, 2015 he aggravated his back by pulling something in his groin area while lifting boxes at work. The Board finds that, although Dr. Cleves supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion that appellant's back condition was due to the factors of employment.[9] Dr. Cleves did not explain the process by which lifting boxes caused or aggravated the diagnosed conditions.[10] Medical rationale is particularly necessary given that appellant had a preexisting low back condition and underwent a surgery in 2008. As the opinion of appellant's physician regarding causal relationship was conclusory and unexplained, it was insufficient to meet appellant's burden of proof.[11]

Appellant submitted an August 24, 2016 operative report from Dr. Hazzard who performed a bilateral percutaneous sacroiliac joint fixation, intraoperative fluoroscopy and intraoperative neuromonitoring, and diagnosed bilateral sacroiliac joint fixation. Dr. Hazzard's notes are insufficient to establish the claim as he did not provide a history of injury[12] or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[13]

Appellant was initially treated by Dr. Skinner, a chiropractor from May 18 to July 20, 2015, for low back pain. He reported that he sustained a work injury on May 15, 2015 while he was lifting and carrying boxes of ammunition while working. Section 8101(2) of FECA provides that chiropractors are considered physicians "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 and subject to regulation by the Secretary."[14] Thus, where x-rays do not demonstrate a spinal subluxation, a chiropractor is not considered a "physician," and his or her reports cannot be considered as competent medical evidence under FECA.[15] Dr. Skinner is not considered a physician in this case as he did not diagnose a spinal

[9] *See T.M.*, Docket No. 08-0975 (issued February 6, 2009) (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).

[10] *Id.*

[11] *J.M.,* 58 ECAB 478 (2007) (where the Board found that appellant did not meet his burden of proof in establishing a work-related right wrist condition where his physician provided only conclusory support for causal relationship and did not identify any of the job duties appellant performed at the employing establishment which he believed were responsible for appellant's condition or explain how his work duties at the employing establishment caused or contributed to his condition. Medical rationale was particularly necessary given that appellant injured his wrist while lifting luggage in private employment. As the opinion of appellant's physician regarding causal relationship was conclusory and unexplained, it was insufficient to meet appellant's burden of proof).

[12] *Frank Luis Rembisz,* 52 ECAB 147 (2000).

[13] *A.D.*, 58 ECAB 149 (2006); Docket No. 06-1183 (issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[14] 5 U.S.C. § 8101(2); *see also* section 10.311 of the implementing federal regulations provides: "(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal on request."

[15] *See Susan M. Herman,* 35 ECAB 669 (1984).

subluxation demonstrated by x-ray. Thus, his opinion is not considered competent medical evidence under FECA.

Appellant submitted physical therapy notes dated March 8, 2016. The Board has held that treatment notes signed by a physical therapist, are not considered medical evidence as they are not a physician under FECA[16] and are not competent to render a medical opinion under FECA. Thus, this evidence is not sufficient to meet appellant's burden of proof.

Due to appellant's history of prior injury and the lack of clarity between his claim for groin pain and the development of additional back pain, OWCP properly requested further medical evidence as to the specific history and date of his back conditions. As previously discussed above, appellant failed to submit a narrative medical report containing a history of injury and a physician's opinion relative to same. The Board finds that he has failed to submit sufficient medical evidence to establish that his accepted work incident on May 15, 2015 caused or aggravated a diagnosed medical condition.

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 did not meet his burden of proof to establish a lumbar injury causally related to the accepted May 15, 2015 employment incident.

[16] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the January 30, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 2017
Washington, DC

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

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

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