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

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| **E.V., Appellant** | ) | |
| **and** | ) | **Docket No. 18-0106** |
| | ) | **Issued: April 5, 2018** |
| **DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Mesa, AZ, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*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 October 13, 2017 appellant filed a timely appeal from a September 21, 2017 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 the claim.[2]

### ***ISSUE***

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted May 17, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] OWCP continued to receive evidence after it issued the September 21, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

## ***FACTUAL HISTORY***

On May 31, 2017 appellant, then a 65-year-old mine safety and health inspector, filed a traumatic injury claim (Form CA-1) alleging that, on May 17, 2017, he tripped over a rock and fell while in the performance of duty. He alleged injury to his left groin, lower back, and right knee. Appellant stopped work on July 20, 2017.

Evidence received with the claim included a May 17, 2017 accident/incident report.

In a July 20, 2017 initial report, Dr. Kathyayini Konuru, a family practitioner, noted the history of the May 17, 2017 work incident when he stepped on a rock and stopped himself from falling. She indicated that appellant filed an accident report and went back to work. Additionally, Dr. Konuru noted that approximately a month ago, he had inspected a crusher at different levels of six flights of stairs, and at the end of the day, he felt increased tightness and pain in his left low back. Appellant's boss restricted him from climbing stairs and the pain improved, but the tightness remained. Dr. Konuru reported that the prior week appellant reported climbing about 15 feet and the next day he felt pain in his low back which radiated into the right leg. Examination findings revealed tightness in the lower lumbar area. Dr. Konuru provided an assessment of lumbosacral radiculopathy. She ordered objective testing and prescribed physical therapy. Disability notes from Dr. Konuru indicated that appellant was excused from work until August 9, 2017.

In an August 14, 2017 development letter, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition. Appellant was afforded 30 days to submit the requested information.

A July 21, 2017 x-ray of lumbar spine reported findings of normal lower thoracic and lumbar spine, vertebral body heights, without fracture or subluxation. Multilevel spondylosis, mild, mid-lower lumbar spine dextrocurvature, and probable L4-S1 degenerative facet changes were also seen.

Treatment notes dated July 25, August 8, 18, and 30, 2017 from Dr. Konuru were also received. Dr. Konuru diagnosed lumbosacral radiculopathy and continued to hold appellant off work two weeks at a time. On August 30, 2017 she released appellant to light-duty work with restrictions until September 14, 2017. On September 13, 2017 Dr. Konuru released appellant to full duty with no restrictions.

In an August 29, 2017 magnetic resonance imaging (MRI) scan report of the lumbar spine, Dr. Roberto Zamudio, a Board-certified internist, provided an impression of multilevel lumbar spine degenerative disc disease, listhesis, and spondylosis with various degrees of neural foraminal narrowing and spinal canal stenosis.

Physical therapy notes dated August 1, 9, 11, 15, 17, 22, 24, and 29, 2017.

In a supplemental statement dated September 11, 2017, appellant related that he had submitted photos to substantiate that the incident occurred as alleged. He also explained that he kept working after the incident, with pain, to help his agency achieve its 100 percent inspection goal.

By decision dated September 21, 2017, OWCP accepted that the employment incident occurred as alleged, but denied appellant's claim as the medical evidence of record was insufficient to establish that appellant's diagnosed medical conditions were causally related to the May 17, 2017 employment incident.

## ***LEGAL PRECEDENT***

An employee seeking compensation under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[4] including that he or she is an employee within the meaning of FECA, and that the claim was filed within the applicable time limitation. The employee must also establish that he or she sustained an injury in the performance of duty as alleged, and that disability from work, if any, was causally related to the 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. 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 to establish that the employment incident caused a personal injury.[6]

Causal relationship is a medical issue, and the evidence required to establish causal relationship is rationalized medical evidence.[7] The opinion of the physician must be 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 employee.[8] 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.[9]

[3] *Supra* note 1.

[4] *J.P.*, 59 ECAB 178 (2007).

[5] *Id.; Elaine Pendleton*, 40 ECAB 1143, 1145 (1989). OWCP regulations define 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. 20 C.F.R. § 10.5(ee). OWCP regulations define the term occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

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

[7] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[9] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

## ***ANALYSIS***

The Board finds that, although it is undisputed that the May 17, 2017 incident occurred as alleged, the medical evidence submitted by appellant is insufficient to establish that the accepted employment incident caused his diagnosed medical conditions.

Medical evidence submitted to support a claim for compensation should reflect a correct history and should offer a medically sound explanation of how the employment incident caused or aggravated the diagnosed condition.[10] Dr. Konuru's reports did not provide an opinion as to the cause of appellant's diagnosed lumbosacral radiculopathy. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's conditions is of limited probative value on the issue of causal relationship.[11] These reports, therefore, are insufficient to establish appellant's claim.

Likewise, the diagnostic studies, which include a lumbar x-ray and MRI scan report of the lumbar spine, did not provide a cause of any diagnosed conditions. Diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[12] Therefore, these reports are insufficient to establish appellant's claim.

The physical therapy reports of record are also insufficient to establish appellant's claim. Physical therapists are not considered physicians as defined under FECA and their reports have no probative value. Thus these reports are insufficient to establish appellant's claim.[13]

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.[14] Appellant's honest belief that the May 17, 2017 employment incident caused his injury, however, sincerely held, does not constitute the medical evidence necessary to establish causal relationship.[15]

Appellant has the burden to furnish reasoned medical evidence supporting that the May 17, 2017 employment incident caused or aggravated a diagnosed condition.[16] The medical evidence of record is insufficient to meet appellant's burden of proof.[17]

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[10] *D.D.,* Docket No. 13-1517 (issued April 14, 2014).

[11] *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).

[12] *See J.S.,* Docket No. 17-1039 (issued October 6, 2017).

[13] 5 U.S.C. § 8101(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 E.W.,* Docket No. 16-1729 (issued May 12, 2017).

[14] *D.D.,* 57 ECAB 734 (2006).

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

[16] *See S.C.,* Docket No. 17-0490 (issued June 27, 2017).

[17] *Id.*

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.[18]

## ***CONCLUSION***

The Board finds that appellant failed to establish a traumatic injury causally related to the accepted May 17, 2017 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the September 21, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2018
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

[18] An authorization for examination and/or treatment (Form CA-16) was completed by an employing establishment official on July 6, 2017 and purported to authorize treatment by Desert Weight Loss Center/East Valley Family Medical under specified conditions. Where an employing establishment properly executes a Form CA-16 authorizing medical treatment related to a claim for a work injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination/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).