



## **ISSUE**

The issue is whether appellant met his burden of proof to establish an injury causally related to the accepted March 6, 2017 employment incident.

On appeal counsel argues that OWCP erred in denying appellant's claim as it used the wrong standard for causation.

## **FACTUAL HISTORY**

On March 6, 2017 appellant, then a 35-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that, on that date, he sustained neck and head injuries when his postal vehicle was rear-ended by a customer. He stopped work on March 6, 2017 and returned on March 11, 2017.

On March 6, 2017 appellant was seen at Spotsylvania Regional Medical Center by Dr. William Durkin, Jr., an examining Board-certified emergency room physician. Dr. Durkin diagnosed hand sprain, and noted neck and back pain on discharge notes.

In a March 8, 2017 case summary, Dr. Nathar Ansari, a treating Board-certified internist, diagnosed cervicgia due to a motor vehicle accident. He related appellant's history of injury and noted that appellant complained of aches and pains primarily in the head and neck regions. Dr. Ansari released appellant to return to work on April 11, 2017.

In a development letter dated April 19, 2017, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he respond to an attached questionnaire in order to substantiate the factual element of his claim and that he submit additional medical evidence to establish a diagnosed medical condition causally related to the alleged March 6, 2017 employment incident. Appellant was afforded 30 days to submit the requested evidence.

Appellant thereafter submitted the police crash report and an April 17, 2017 case summary from Dr. Ansari who noted that appellant was seen for back, left arm, and bilateral knee pain following a motor vehicle accident last month. Dr. Ansari diagnosed a backache due to the motor vehicle accident.

In a May 1, 2017 report, Dr. Ansari opined that appellant sustained injuries to his back, upper extremities, and knees due to the March 6, 2017 motor vehicle accident. He noted that appellant had been seen in the emergency room on the date of the incident and was seen by him for follow-up visits on March 8 and April 17, 2017. Dr. Ansari opined that, since the March 6, 2017 motor vehicle accident, appellant had been disabled from work due to injuries sustained from the accident. In a May 5, 2017 case summary, he diagnosed lumbago and cervicgia, which he attributed to the motor vehicle accident.

In progress notes dated May 11, 2017, Allison Baldwin, a certified physician assistant, noted that appellant was involved in a motor vehicle accident on March 6, 2017. She diagnosed L5-S1 lumbar degenerative disc disease with axial back pain and attributed appellant's myofascial sprain/strain symptoms as likely due to the motor vehicle accident. Ms. Baldwin related that

review of an x-ray interpretation showed L5-S1 mild degenerative disc disease with no osseous injury noted.

By decision dated May 22, 2017, OWCP denied appellant's claim. It found that the March 6, 2017 incident occurred as alleged, but that he had not submitted medical evidence diagnosing a condition in connection with the accepted incident.

On May 31, 2017 OWCP received appellant's request for reconsideration. Appellant resubmitted the May 11, 2017 report by Ms. Baldwin countersigned by Dr. Raymond Kirchner, Jr., a treating Board-certified orthopedic surgeon, and a June 22, 2017 report signed by Ms. Baldwin and countersigned by Dr. Kirchner.

In the June 22, 2017 report, Dr. Kirchner noted that appellant was seen for complaints of back pain. Medical and injury histories and physical examination findings were detailed. Dr. Kirchner diagnosed L5-S1 lumbar degenerative disc disease with axial back pain.

By decision dated July 12, 2017, OWCP modified its prior decision to find that appellant had submitted medical evidence diagnosing a condition. However, the claim remained denied as Dr. Kirchner failed to provide a rationalized opinion explaining how the diagnosed lumbar condition had been caused or aggravated by the accepted March 6, 2017 employment incident.

On August 21, 2017 appellant requested reconsideration.

An August 15, 2017 magnetic resonance imaging (MRI) scan noted multilevel degenerative changes without significant overall spinal canal stenosis, C5-6 focal right paracentral disc osteophyte flattening and indenting ventral cord with C5-7 left paracentral disc osteophyte causing significant left lateral recess narrowing and likely impacting the left C7 nerve root, and multilevel neural foraminal stenosis

In August 18, 2017 progress notes, Dr. Robert G. Squillante, a treating Board-certified orthopedic surgeon, diagnosed lumbar sprain and facet syndrome and cervical disc herniation, which he attributed to the March 6, 2017 employment-related motor vehicle accident. A physical examination revealed reduced cervical range of motion, positive Spurling's sign on the left, no upper extremity motor or sensory deficits, and tenderness over L3-4 and 4-5 regions. Dr. Squillante related that appellant continued to be disabled from work.

In an August 18, 2017 duty status report (Form CA-17), Dr. Squillante noted that appellant was off work for six weeks. Under history of injury, he noted that appellant was rear ended on March 6, 2017. Dr. Squillante diagnosed cervical herniated nucleus pulposus (HNP) and lumbar facet syndrome, which he attributed to the March 6, 2017 employment-related motor vehicle accident.

By decision dated September 27, 2017, OWCP denied modification of its prior decision. It found that the medical evidence of record was insufficiently rationalized to establish that appellant's diagnosed medical conditions were causally related to the accepted employment incident.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</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.<sup>6</sup> First, the employee must submit sufficient evidence to establish that he or she 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>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>9</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>10</sup> 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.<sup>11</sup>

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> *J.O.*, Docket No. 17-0789 (issued May 15, 2018); *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>5</sup> *J.O.*, *id.*; *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *R.M.*, Docket No. 17-1652 (issued January 5, 2018); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

<sup>7</sup> *R.M.*, *id.*; *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>8</sup> *R.M.*, *supra* note 6; *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

<sup>9</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>10</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006)

<sup>11</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

## ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury causally related to the accepted employment-related motor vehicle accident of March 6, 2017. Appellant has failed to submit a well-rationalized medical opinion indicating that the diagnosed conditions were causally related to the accepted March 6, 2017 employment incident.

In support of his claim, appellant submitted reports from Dr. Ansari and Dr. Squillante. Dr. Ansari, in various reports, attributed the diagnosed conditions to the March 6, 2017 employment-related motor vehicle accident. On a March 18, 2017 report he diagnosed cervicalgia, which he attributed to the motor vehicle accident. In an April 17, 2017 report, Dr. Ansari diagnosed back ache due to the employment-related motor vehicle accident, while in a May 1, 2017 report he concluded that this motor vehicle accident caused injuries to appellant's back, upper extremities, and knees. On May 5, 2017 He diagnosed lumbago and cervicalgia due to the motor vehicle accident. Dr. Squillante, in an August 18, 2017 progress note, diagnosed lumbar sprain and facet syndrome and cervical disc herniation due to the March 6, 2017 motor vehicle accident. In an August 17, 2017 Form CA-17, he diagnosed cervical HNP and lumbar facet syndrome, which he attributed to the March 6, 2017 employment incident.

The Board finds that, while Dr. Ansari and Dr. Squillante are generally supportive of causal relationship, they did not provide adequate medical rationale explaining the basis of their opinions on causal relationship. The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.<sup>12</sup> Neither physician offered any rationalized medical explanation as to how the accepted employment incident caused appellant's diagnosed conditions. As such, their opinions are of limited probative value.<sup>13</sup> The mere fact that a condition arises after an injury and was not present before an injury is insufficient to support causal relationship.<sup>14</sup>

The record also contains reports from Dr. Kirchmier dated May 11 and June 22, 2017. In the May 11, 2017 report, Dr. Kirchmier diagnosed L5-S1 lumbar degenerative disc disease with axial back pain and opined that the myofascial sprain/strain symptoms were likely due to the motor vehicle accident. The Board finds that Dr. Kirchmier's conclusion is speculative. While the opinion supporting causal relationship does not have to reduce the cause or etiology of a condition to an absolute certainty, the opinion must not be speculative or equivocal in nature.<sup>15</sup>

The record also contains a June 22, 2017 report by Dr. Kirchmier and March 6, 2017 report by Dr. Durkin. Dr. Kirchmier diagnosed L5-S1 lumbar degenerative disc disease with axial back pain. Dr. Durkin diagnosed neck and back pain and hand sprain. However, in these reports, neither

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<sup>12</sup> See *M.J.*, Docket No. 17-0725 (issued May 17, 2018); See also *Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>13</sup> See *A.B.*, Docket No. 16-1163 (issued September 8, 2017).

<sup>14</sup> See *M.J.*, *supra* note 12; *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>15</sup> *J.S.*, Docket No. 17-0507 (issued August 11, 2017).

Dr. Durkin nor Dr. Kirchmier offered any opinion as to causation. As neither opinion addressed the cause of appellant's diagnosed conditions, these reports are insufficient to establish causal relationship.<sup>16</sup>

OWCP also received an August 21, 2017 MRI scan in support of his claim. The Board has previously explained that diagnostic testing is of limited probative value as it fails to provide a physician's reasoned opinion on causal relationship between appellant's work incident and the diagnosed conditions.<sup>17</sup>

The record before the Board is without rationalized medical evidence establishing that appellant sustained cervical and lumbar conditions causally related to the accepted March 6, 2017 work incident. OWCP advised appellant that it was his responsibility to provide a comprehensive medical report, which described his symptoms, test results, diagnosis, history of treatment, and the physician's opinion, with medical reasons, on the cause of his conditions. Appellant failed to submit appropriate medical documentation in response to OWCP's request. An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.<sup>18</sup> Thus, the Board finds that appellant failed to meet his burden of proof.

On appeal counsel argues that OWCP applied an incorrect causation standard and requests the Board to identify the deficiencies in the medical opinion evidence. Contrary to counsel's argument, OWCP did not apply an improper standard of causation. As discussed above, the record contains no medical evidence explaining how the diagnosed conditions had been caused or aggravated by the accepted March 6, 2017 employment incident.

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 an injury causally related to the accepted March 6, 2017 employment incident.

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<sup>16</sup> See *M.J.*, *supra* note 12; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>17</sup> See *O.Y.*, Docket No. 17-0651 (issued May 2, 2018).

<sup>18</sup> See *B.A.*, Docket No. 17-1130 (issued November 24, 2017); *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 27, 2017 is affirmed.

Issued: July 13, 2018  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board