



Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

### **ISSUE**

The issue is whether appellant has met his burden of proof to establish that his lumbar condition was causally related to the accepted May 30, 2014 employment incident.

### **FACTUAL HISTORY**

On June 2, 2014 appellant, then a 40-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that, while delivering mail on May 30, 2014, the step upon which he was standing gave way, causing the immediate onset of lumbar pain with left-sided radiculopathy. The employing establishment issued an authorization for examination and treatment (Form CA-16) on June 2, 2014 to evaluate the lumbar sprain sustained on May 30, 2014. Appellant stopped work shortly thereafter on June 2, 2014 and returned to work on June 3, 2014.

In a report dated June 12, 2014, Dr. Kenneth Citak, an attending Board-certified neurologist, provided a history of injury and treatment. He noted that a June 3, 2014 magnetic resonance imaging scan showed mild disc degeneration and a broad-based disc herniation at L4-5, and a left paracentral disc herniation at L3-4. Dr. Citak diagnosed a lumbar disc herniation with left-sided radiculopathy and a left foot drop.

In a report dated June 18, 2014, Dr. Faisal Mahmood, an attending Board-certified orthopedic surgeon, provided a history of the May 30, 2014 employment incident and the onset of left-sided lumbar radiculopathy. On examination of the left lower extremity, he found severe weakness in the tibialis anterior and extensor hallucis longus, with diminished sensation in the L4 and L5 dermatomes. Dr. Mahmood diagnosed "severe weakness secondary to multilevel disc herniations at L4-5 and L5-S1 in the left lower extremity" with a demonstrable left foot drop. He recommended L3-4 and L4-5 microdiscectomies with decompression of the L4 and L5 nerve roots. Dr. Mahmood prescribed a left ankle foot orthotic brace.

By development letter dated June 30, 2014, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional medical and factual evidence. Appellant was also provided a list of questions for his physician regarding how the alleged employment incident would have caused or aggravated the claimed injuries. OWCP emphasized that a detailed, well-rationalized opinion from appellant's treating physician on causal relationship was crucial to his claim.

Appellant provided June 18 and July 7, 2014 duty status reports (Form CA-17) from Dr. Peter Berger, a chiropractor, who diagnosed "peroneal neuropathy and dropped foot."

OWCP received a July 14, 2014 progress note and physical therapy prescription from Dr. Mahmood.

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

By decision dated August 5, 2014, OWCP denied the claim, finding that causal relationship had not been established. It accepted that the May 30, 2014 employment incident occurred at the time, place, and in the manner alleged. However, OWCP denied the claim as the medical evidence of record contained insufficient rationale to establish causal relationship between the accepted employment incident and the claimed lumbar condition.

On July 30, 2015 appellant, through counsel, requested reconsideration. He submitted additional medical reports from Dr. Mahmood.

In a report dated June 26, 2014, Dr. Mahmood described performing a left L3-4 microdiscectomy with partial foraminotomy, facetectomy, and laminectomy, a partial L4-5 laminectomy with nerve root decompression, and a partial L4-5 right partial laminectomy with decompression. He noted that appellant sustained an “injury while at work at which time he began to have progressive paresthesias and motor weakness in his left lower extremity.” Dr. Mahmood provided progress notes dated August 26, 2014 and July 21, 2015, and an August 26, 2014 physical therapy prescription.

Dr. Mahmood provided a July 22, 2015 narrative report in which he related appellant’s account of the accepted May 30, 2014 incident, with the onset of lumbar pain and significant left lower extremity weakness and paresthesias. He opined that the May 30, 2014 incident, which he described as a fall, damaged “neurologic structures secondary to disc herniations at L3-4 and L4-5.” Dr. Mahmood also opined that “despite surgical intervention [appellant] will continue to have weakness in the left lower extremity” that would require permanent use of an ankle-foot orthotic.

By decision dated March 25, 2016, OWCP denied modification of its prior decision as the additional evidence submitted contained insufficient medical rationale to establish causal relationship. It also found that Dr. Mahmood’s description of a May 30, 2014 “fall” did not conform to appellant’s account of events. Therefore, Dr. Mahmood’s medical opinion on causation was inaccurate.

On March 27, 2017 appellant, through counsel, requested reconsideration. Counsel contended that the totality of the medical evidence of record was sufficient to meet appellant’s burden of proof in establishing causal relationship. Alternatively, he asserted that Dr. Mahmood’s opinion was of sufficient probative quality to require further development by OWCP. Counsel provided additional medical evidence.

In a March 27, 2017 report, Dr. Mahmood noted that, during the accepted May 30, 2014 employment incident, appellant “was walking on a resident’s steps during a mail delivery, and unfortunately the step gave way, causing him to fall.” Appellant had no lumbar pain or neurologic involvement prior to the May 30, 2014 incident. Dr. Mahmood opined that “the injuries which [appellant] sustained as a result of a work-related injury resulted in damage to neurologic structures secondary to disc herniations at L3-4 and L4-5.” He also opined that “with a high degree of medical probability that these injuries are directly and causally related to” the accepted May 30, 2014 employment incident.

By decision dated June 19, 2017, OWCP denied modification of its prior decision, finding that Dr. Mahmood’s March 27, 2017 report did not explain how and why the accepted May 30,

2014 incident would cause the diagnosed herniated discs and neurologic injury affecting the left lower extremity. It found that, in the absence of such rationale, Dr. Mahmood's opinion was insufficient to meet appellant's burden of proof to establish a causal relationship between the accepted employment incident and the claimed lumbar injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</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>5</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>6</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury has been established. First, an employee has the burden of proof to demonstrate the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.<sup>7</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.<sup>8</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>9</sup>

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>10</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>11</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by

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<sup>4</sup> *Id.*

<sup>5</sup> *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>6</sup> *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>7</sup> *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

<sup>8</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>9</sup> *D.J.*, Docket No. 17-0364 (issued April 13, 2018); *K.B.*, Docket No. 17-1363 (issued February 14, 2018), *Gary J. Watling*, *id.*

<sup>10</sup> *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>11</sup> *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his lumbar condition was causally related to the accepted May 30, 2014 employment incident.

The determination of whether an employment incident caused an injury is generally established by medical evidence.<sup>13</sup> Dr. Citak, an attending Board-certified neurologist, diagnosed a lumbar disc herniation with left-sided radiculopathy and a left foot drop, but did not address causal relationship. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>14</sup>

Dr. Mahmood, an attending Board-certified orthopedic surgeon, opined that appellant sustained an employment injury with "progressive paresthesias and motor weakness in his left lower extremity." In a July 22, 2015 report, he opined that the May 30, 2014 incident damaged neurologic structures from L3 to L5. On March 27, 2017 Dr. Mahmood again opined that the accepted May 30, 2014 employment incident "directly and casually" damaged neurologic structures secondary to the L3-4 and L4-5 disc herniations. He, however, did not provide his medical reasoning as to how and why the accepted employment incident would result in herniated discs. Without explaining how, physiologically, the movements involved in the employment incident caused or contributed to the diagnosed condition, Dr. Mahmood's opinion on causal relationship is equivocal in nature and of limited probative value.<sup>15</sup>

OWCP also received June 18 and July 7, 2014 duty status reports (Form CA-17) from Dr. Berger, a chiropractor, who diagnosed "peroneal neuropathy and dropped foot." As there is no evidence of record that Dr. Berger diagnosed a spinal subluxation by x-ray, he is not considered a physician under FECA for the purposes of this case, and his reports are of no probative medical value.<sup>16</sup>

In order to establish causal relationship, a physician must provide an opinion that the injury or condition for which compensation is claimed is causally related to federal employment and such

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<sup>12</sup> *Id.*

<sup>13</sup> *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

<sup>14</sup> *See S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

<sup>15</sup> *See L.B.*, Docket No. 17-1600 (issued March 9, 2018).

<sup>16</sup> Section 8101(2) of FECA provides that medical opinion, in general, can only be given by a qualified physician. 5 U.S.C. § 8101(2). This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by stated law. Section 8101(3) of FECA, which defines services and supplies, limits reimbursable chiropractic services 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. 5 U.S.C. § 8101(3). *See Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

relationship must be supported with affirmative evidence, explained by medical rationale, and be based upon a complete and accurate medical and factual background of the claimant.<sup>17</sup> Appellant was provided an opportunity to submit evidence to establish how the claimed herniated discs occurred. By development letter dated June 30, 2014, OWCP requested that appellant obtain an opinion from his attending physician with medical rationale addressing causal relationship. Appellant has not submitted a medical report sufficient to show that the diagnosed multilevel intervertebral disc herniations with left-sided nerve damage were causally related to the accepted May 30, 2014 employment incident, and thus did not meet his burden of proof.<sup>18</sup>

On appeal, counsel asserts that OWCP's June 19, 2017 decision is erroneous as the medical evidence of record is sufficient to meet appellant's burden of proof to establish causal relationship. He contends that there was no contradictory opinion of record. As set forth above, the medical evidence of record contained insufficient medical rationale to meet appellant's burden of proof to establish causal relationship. Alternatively, counsel argues that the quality of medical opinion expressed by Dr. Mahmood required OWCP to conduct further development. However, the lack of medical rationale in Dr. Mahmood's reports diminishes their probative quality.<sup>19</sup> Such opinion lacks the persuasive, convincing quality that would require additional development.

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 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 that his lumbar conditions were causally related to the accepted May 30, 2014 employment incident.

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<sup>17</sup> See *J.W.*, Docket No. 17-0870 (issued July 12, 2017).

<sup>18</sup> *K.B.*, *supra* note 9.

<sup>19</sup> *Supra* note 14.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 19, 2017 is affirmed.<sup>20</sup>

Issued: July 25, 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

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<sup>20</sup> The Board also notes that the case record includes a June 2, 2014 CA-16 form. When the 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. 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); *Tracy P. Spillane*, 54 ECAB 608 (2003).