

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

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D.N., Appellant )

and )

DEPARTMENT OF THE NAVY, U.S. MARINE )  
CORPS, MARINE CORPS AIR STATION, )  
Iwakuni, Japan, Employer )

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**Docket No. 17-0658  
Issued: October 22, 2018**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 12, 2017 appellant filed a timely appeal from a July 27, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of OWCP's decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from OWCP's July 27, 2016 decision was January 23, 2017. Since using January 31, 2017, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is January 12, 2017, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> Together with his appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated May 4, 2018, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 17-0658 (issued May 4, 2018).

## ISSUE

The issue is whether appellant has met his burden of proof to establish injuries due to an accepted October 16, 2014 employment incident.

## FACTUAL HISTORY

On July 1, 2015 appellant, then a 48-year-old deputy station inspector, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury to his lower back, neck, and legs at work on October 16, 2014. He asserted that the injury occurred when he moved old furniture out of the employee lounge of the child development center and moved new furniture into the same lounge.<sup>4</sup> Appellant did not stop work.<sup>5</sup>

In a July 29, 2015 development letter, OWCP noted that appellant had not submitted any evidence in support of his claim for an October 16, 2014 employment injury. It requested that he submit medical evidence, including a physician's opinion supported by a medical explanation as to how the reported October 16, 2014 employment incident caused or aggravated a medical condition. OWCP requested that appellant complete and return an attached questionnaire which posed various questions regarding the claimed October 16, 2014 employment incident. It afforded appellant 30 days to submit a response.

In an August 19, 2015 response to the questionnaire, appellant advised that he moved large amounts of furniture on October 16, 2014, including couches, tables, chairs, bookcases, and lockers. He indicated that he visited off-base physicians for treatment of his October 16, 2014 injury and was in the process of having their medical reports translated from Japanese.<sup>6</sup>

Appellant submitted copies of translations of two medical reports from Japanese to English.<sup>7</sup> In an August 24, 2015 report, Dr. Yoshitomo Naitou, a physician at the Iwakuni Central Hospital, diagnosed lumbar spondylosis deformans and cervical spondylosis deformans. Dr. Naitou prescribed several medications for the diagnosed conditions. In an August 26, 2015 report, Dr. Hisashi Ueda, a physician at the Ueda Orthopedic Hospital, indicated that appellant had

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<sup>4</sup> The record contains two versions of the Form CA-1. Both versions contain the same recitation of how the claimed October 16, 2014 employment injury occurred. However, they contain different witness statements from appellant's immediate supervisor. In the more detailed of her two witness statements, the immediate supervisor indicated that, throughout the day on October 16, 2014, appellant hauled large amounts of furniture in and out of the employee lounge, including couches, tables, chairs, bookcases, lockers, decorative items, televisions, and appliances. She noted that appellant was participating in a required task designed to prepare the employee lounge for an inspection. Appellant reported hurting his back, neck, and legs on October 16, 2014.

<sup>5</sup> In an October 16, 2015 letter, an employing establishment official indicated that appellant no longer worked for the employing establishment in Iwakuni.

<sup>6</sup> In an August 25, 2015 statement, appellant further discussed his treatment for the claimed October 16, 2014 employment injury. He indicated that he was enclosing a statement from his immediate supervisor, but the record does not contain an additional statement from her.

<sup>7</sup> The record also contains copies of the original reports written in Japanese.

check-up visits on October 17, 2014 and May 22, 2015. Dr. Ueda noted that, during each visit, lumbar pain was diagnosed and appellant received physiotherapy for his lumbar region.

By decision dated September 10, 2015, OWCP denied appellant's claim for an October 16, 2014 employment injury. It accepted the occurrence of an employment incident on October 16, 2014 in the form of moving large amounts of furniture and other items, but found that appellant failed to submit medical evidence sufficient to establish causal relationship between an injury or diagnosed medical condition and the accepted October 16, 2014 employment incident.

On October 8, 2015 appellant requested a telephone hearing with a representative of OWCP's Branch of Hearings and Review. During the hearing held on June 9, 2016, appellant provided further details regarding his medical treatment for the claimed October 16, 2014 employment injury and the nature of his continuing symptoms. Appellant asserted that he did not have any back, neck, or leg problems prior to October 16, 2014. Appellant's immediate supervisor testified regarding her witnessing of appellant moving furniture on October 16, 2014.

By decision dated July 27, 2016, OWCP's hearing representative affirmed OWCP's September 10, 2015 decision, as modified to reflect a different basis for denying appellant's claim. The hearing representative found that appellant's claim for an October 16, 2014 employment injury was denied because he failed to establish the medical component of the fact of injury. She noted that appellant failed to submit a medical report providing "physical examination or diagnostic findings to establish the diagnoses of lumbar and cervical spondylosis" and their relationship to the accepted October 16, 2014 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>8</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 timely filed within the applicable time limitation period 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 are causally related to the employment injury.<sup>9</sup> 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.<sup>10</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident

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<sup>8</sup> See *supra* note 2.

<sup>9</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>10</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

at the time, place, and in the manner alleged.<sup>11</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>12</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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 claimant.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish injury due to an October 16, 2014 employment incident.

Appellant claimed that he sustained injuries to his lower back, neck, and legs at work on October 16, 2014 due to moving large amounts of furniture and other items. In a September 10, 2015 decision, OWCP accepted the occurrence of an employment incident on October 16, 2014 in the form of moving large amounts of furniture and other items, but denied appellant's claim because he failed to submit medical evidence sufficient to establish causal relationship between a diagnosed medical condition and the accepted October 16, 2014 employment incident. By decision dated July 27, 2016, OWCP's hearing representative affirmed OWCP's September 10, 2015 decision as modified to reflect that appellant's claim for an October 16, 2014 employment injury was denied because he failed to establish the medical component of fact of injury.

In support of his claim, appellant submitted two medical reports. In an August 24, 2015 report, Dr. Naitou diagnosed lumbar spondylosis deformans and cervical spondylosis deformans. He prescribed several medications for the diagnosed conditions. In an August 26, 2015 report, Dr. Ueda indicated that appellant appeared for check-up visits on October 17, 2014 and May 22, 2015. He noted that, during each visit, lumbar pain was diagnosed and appellant received physiotherapy for his lumbar region.

The Board finds that the submission of these reports do not establish appellant's claim for an October 16, 2014 employment injury because they have no probative value on this matter due to their lack of an opinion on causal relationship. Neither report contains any opinion on the cause of the diagnosed medical conditions. Moreover, the reports do not contain any mention of the accepted October 16, 2014 employment incident or any other employment factor. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>14</sup>

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<sup>11</sup> *Julie B. Hawkins*, 38 ECAB 393 (1987).

<sup>12</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>13</sup> *See I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>14</sup> *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

Prior to denying appellant's claim, OWCP advised appellant regarding the type of medical evidence needed to establish an employment injury on October 16, 2014 and it provided him an opportunity to submit such evidence. However, appellant failed to submit rationalized medical evidence sufficient to establish that he sustained a diagnosed medical condition due to the accepted October 16, 2014 employment incident. For these reasons, appellant has failed to meet his burden of proof to establish a claim for an October 16, 2014 employment injury.<sup>15</sup>

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 injury due to an accepted October 16, 2014 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 27, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 22, 2018  
Washington, DC

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

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

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

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<sup>15</sup> See *supra* notes 11 through 13.