

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

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**A.P., Appellant**

**and**

**DEPARTMENT OF THE ARMY, ARMY  
NATIONAL GUARD, Salinas, PR, Employer**

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**Docket No. 17-1604  
Issued: October 19, 2018**

*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 July 18, 2017 appellant filed a timely appeal from a March 23, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a lumbar condition causally related to the accepted factors of his federal employment.

**FACTUAL HISTORY**

On December 29, 2016 appellant, a 38-year-old surface maintenance mechanic, filed a recurrence claim (Form CA-2a) under File No. xxxxxx690, alleging a recurrent need for further

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

medical treatment commencing May 20, 2011.<sup>2</sup> In a February 6, 2017 narrative statement, he stated that on May 23, 2016 he was performing his federal employment duties, which included bending, climbing, inspecting military vehicles, lifting heavy objects, diagnostics, and replacing parts, etc., when he suddenly started to feel a lot of pain in his back in the same area and with the same symptoms that he felt when he was injured on May 20, 2011. Based on appellant's description of his injury, OWCP converted his December 29, 2016 recurrence claim to a claim for a new traumatic injury (Form CA-1) alleging that, on May 23, 2016, he sustained a back injury in the performance of duty. The new traumatic injury claim was assigned OWCP File No. xxxxxx119.

In a June 20, 2016 report, Dr. Rael Bernier-Soto, a Board-certified physiatrist, noted that appellant had been under his care since June 1, 2016 due to low back pain radiating to his posterior right lower extremity. He reviewed a magnetic resonance imaging (MRI) scan and diagnosed protruded disc at L5-S1 and L4-5 and bulging disc at L3-4.

On July 20, 2016 Dr. Bernier-Soto advised that appellant should be excused from work and any strenuous physical activity until future medical clearance.

In an August 31, 2016 report, Dr. Bernier-Soto provided work restrictions of lifting no more than 10 pounds.

Electromyography and nerve conduction velocity (EMG/NCV) studies dated September 6, 2016 demonstrated left S1 radiculitis and bilateral chronic or old L4 radiculopathy.

On December 7, 2016 Dr. Luis E. Cummings, a Board-certified anesthesiologist, diagnosed lumbar spondylosis and noted that appellant had received a right facet lumbar block and a right transforaminal block that day.

Appellant submitted hospital reports dated January 10 and 12, 2017 indicating that he had undergone epidural blocks for his lumbar radiculopathy condition.

In a February 14, 2017 letter, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries.

In response, appellant submitted a June 6, 2016 MRI scan of the lumbosacral spine which showed degenerative disc disease from L3-4 down to L5-S1 and a small broad-based posterior soft disc herniation at L5-S1 extending slightly into each lateral recess.

In reports dated June 1, 17, and 29, 2016, Dr. Bernier-Soto indicated that appellant was seen for lower back pain that had started several years prior. He diagnosed lumbosacral disc displacement and lumbar radiculopathy. Dr. Bernier-Soto indicated that appellant's pain was constant and worsened with prolonged sitting.

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<sup>2</sup> Under xxxxxx690, appellant filed a traumatic injury claim (Form CA-1) alleging a May 20, 2011 back injury. OWCP accepted the claim for lumbar radiculopathy.

On November 2, 2016 Dr. Reynaldo Dejesus-Rodriguez, specializing in neurosurgery, noted that appellant had suffered from low back pain since 2007. He further noted that appellant's pain worsened significantly in May 2016 and diagnosed lumbosacral disc degeneration and displacement, lumbar radiculopathy, and low back pain.

In a February 2, 2017 report, Dr. Dejesus-Rodriguez indicated that appellant's epidural blocks had not been successful and recommended surgical intervention.

On March 2, 2017 Dr. Dejesus-Rodriguez indicated that appellant underwent lumbar surgery on February 20, 2017, which included an L4-5 lateral interbody fusion and a right L5-S1 transforaminal interbody fusion with instrumentation. He provided a 10-pound lifting and carrying restriction and advised that appellant would be able to return to work on approximately June 12, 2017.

Appellant further submitted a March 14, 2017 narrative statement indicating that he was injured at approximately 10:15 a.m. on May 23, 2016 when inspecting vehicles, which was his primary task. He stated that he had to bend under a vehicle and climb on it in order to complete an inspection, as well as open and close heavy doors and hoods, which caused his injury. Appellant further indicated that his federal duties required frequent standing, bending, reaching, stretching, climbing, and crouching.

In a March 14, 2017 report, Dr. Bernier-Soto diagnosed acute low back pain with herniated nucleus pulposus (HNP) at L4-S1, chronic bilateral L4 radiculopathy, and right S1 radiculitis. He noted that appellant's condition started after a trauma while inspecting a vehicle on May 23, 2016. Dr. Bernier-Soto opined that appellant was unable to perform his required duties due to his bilateral radiculopathy and right radiculitis caused by compression of the nerves with pain, weakness, and sensory impairment in the affected nerve root. He found that appellant's lesion could be directly related to the reported May 23, 2016 trauma and as a consequence of repetitive trauma due to his job. Dr. Bernier-Soto provided the following work restrictions: no prolonged or frequent sitting, standing, bending, crouching, or driving; no carrying greater than five pounds; no wearing load-bearing equipment greater than five pounds; no high impact activities; no working in uncomfortable positions; avoid pushing, pulling, and carrying heavy objects greater than five pounds.

By decision dated March 23, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed conditions and factors of his federal employment.<sup>3</sup>

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence,

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<sup>3</sup> OWCP noted that appellant's recurrence claim, which was initially converted into a traumatic injury claim, had now been converted into an occupational disease claim (Form CA-2).

<sup>4</sup> See *supra* note 1.

including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>6</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>7</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed lumbar condition causally related to the accepted factors of his federal employment.

Appellant identified the factors of employment that he believed caused his conditions which included frequent standing, bending, reaching, stretching, climbing, and crouching while inspecting vehicles at work, which OWCP accepted as factual. However, in order to establish a claim that he sustained an employment-related injury, he must also submit rationalized medical evidence which explains how his medical conditions were caused or aggravated by the implicated employment factors.<sup>8</sup>

The June 6, 2016 MRI scan of the lumbosacral spine confirmed the diagnosis of degenerative disc disease and herniation at L5-S1 and the September 6, 2016 EMG/NCV studies confirmed the diagnosis of left S1 radiculitis and bilateral radiculopathy, but these diagnostic studies do not address the etiology of appellant's lumbar conditions. With respect to the December 7, 2016 report from Dr. Cummings, it offers no opinion regarding the cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue

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<sup>5</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

<sup>6</sup> *Victor J. Woodhams, id.*

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>8</sup> *See A.C.*, Docket No. 08-1453 (issued November 18, 2008).

of causal relationship.<sup>9</sup> Consequently, the above-noted evidence is insufficient to satisfy appellant's burden of proof with respect to causal relationship.<sup>10</sup>

Dr. Dejesus-Rodriguez diagnosed lumbosacral disc degeneration and displacement, lumbar radiculopathy, and low back pain and reported that appellant underwent lumbar surgery on February 20, 2017. He noted that appellant had suffered from low back pain since 2007 and also noted that his pain worsened significantly in May 2016. Dr. Dejesus-Rodriguez did not provide any medical rationale explaining how appellant's frequent standing, bending, reaching, stretching, climbing, and crouching while inspecting vehicles at work caused or aggravated his lumbar conditions. Thus, the Board finds that the reports from Dr. Dejesus-Rodriguez are insufficient to establish that appellant sustained an employment-related injury.<sup>11</sup>

In his reports, Dr. Bernier-Soto noted that appellant had been under his care since June 1, 2016 due to low back pain radiating to his posterior right lower extremity. He diagnosed lumbosacral disc displacement and lumbar radiculopathy. In a March 14, 2017 report, Dr. Bernier-Soto diagnosed acute low back pain with HNP at L4-S1, chronic bilateral L4 radiculopathy, and right S1 radiculitis. He noted that appellant's condition started after a trauma while inspecting a vehicle on May 23, 2016. Dr. Bernier-Soto opined that appellant was unable to perform his required duties due to his bilateral radiculopathy and right radiculitis caused by compression of the nerves with pain, weakness, and sensory impairment in the affected nerve root. He found that appellant's lesion could be directly related to the reported May 23, 2016 trauma and as a consequence of repetitive trauma due to his job. Dr. Bernier-Soto noted that appellant's condition worsened with prolonged sitting, but such generalized statements do not establish causal relationship.<sup>12</sup> He did not provide sufficient medical rationale explaining how appellant's new or preexisting lumbar conditions were caused or aggravated by frequent standing, bending, reaching, stretching, climbing, and crouching while inspecting vehicles at work. The need for rationale is particularly important as the record indicates that appellant had a prior history of lumbar radiculopathy. For these reasons, the Board finds that the reports from Dr. Bernier-Soto are insufficient to establish lumbar conditions causally related to factors of appellant's federal employment.

As appellant has not submitted rationalized medical evidence sufficient to establish causal relationship between his diagnosed conditions and factors of his federal employment, he has not met his burden of proof.

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<sup>9</sup> See *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>10</sup> See *supra* note 5.

<sup>11</sup> A physician's opinion on causal relationship must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Victor J. Woodhams, supra* note 5.

<sup>12</sup> See *K.W.*, Docket No. 10-98 (issued September 10, 2010).

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 a lumbar condition causally related to the accepted factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 23, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 19, 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