

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

R.R., Appellant	)	
	)	
and	)	<b>Docket No. 19-0048</b>
	)	<b>Issued: April 25, 2019</b>
	)	
<b>DEPARTMENT OF DEFENSE, DEFENSE</b>	)	
<b>LOGISTICS AGENCY, New Cumberland, PA,</b>	)	
<b>Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 10, 2018 appellant filed a timely appeal from an August 20, 2018 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.<sup>2</sup>

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

<sup>2</sup> The Board notes that following the August 20, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish that his hernia is causally related to the accepted January 18, 2018 employment incident.

## FACTUAL HISTORY

On January 22, 2018 appellant, then a 61-year-old distribution process worker, filed a traumatic injury claim (Form CA-1) alleging that on January 18, 2018 he sustained a hernia while in the performance of duty.<sup>3</sup> He was picking up a 40-pound box when he felt something pull in his stomach, and felt a big lump. On the reverse side of the claim form the employing establishment noted that appellant stopped work at 11:45 a.m. on the day of the injury, and has not returned.

A January 22, 2018 note from Dr. William J. Albright IV, a Board-certified family practitioner, related that on January 18, 2018 appellant “was lifting [a] heavy box at work when he felt pain in the front of his abdomen....” The pain was moderate and located in the periumbilical region. Dr. Albright advised that appellant would be out of work until surgical intervention could be performed so as to avoid further injury. In his January 18, 2018 treatment notes, he reported a chief complaint of abdominal pain. Dr. Albright described it as a new problem, with a sudden onset of pain earlier that day. After a physical examination, he diagnosed a ventral hernia without obstruction or gangrene. Dr. Albright referred appellant for a surgical consultation.

In a development letter dated January 25, 2018, OWCP advised appellant of the need for additional factual information and medical evidence in support of his claim for FECA benefits. It specifically inquired about the circumstances of the alleged causative employment incident, including witnesses and the immediate effect of the injury. The attached factual questionnaire also included queries as to the existence of any related preexisting conditions. OWCP also requested that appellant provide a narrative report from his attending physician, which was required to include a diagnosis and a medical explanation as to how the reported work incident either caused or aggravated a medical condition. It afforded him 30 days to submit the requested information.

In a signed statement dated February 15, 2018, appellant explained that when he bent over to pick up a box of material weighing 40 pounds, he felt a pulling pain in his stomach. When he stood up, he ran his hand over his stomach and felt “a lump bulging out.” Appellant immediately reported the incident to his supervisor. Further, he stated that there were no other injuries on or off duty, and that he did “not have any similar disability or symptoms before the injury.”

A February 28, 2018 preoperation consultation report signed by Dr. William Perri, a Board-certified general surgeon, reflects that “[Appellant] [stated] that it occurred at work on [January 18, 2018]. He was lifting 40 [to] 50 pounds at the Army Depot and felt a pop. [Appellant] had a previous ventral hernia, right inguinal hernia, and umbilical hernia repaired by Dr. Esposito.” Past surgical history indicates that appellant underwent a hernia repair in 1990, as well as an undated inguinal hernia repair on his right side. Dr. Perri noted that there were at least two

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<sup>3</sup> Under OWCP File No. xxxxxx588, appellant has an accepted traumatic injury claim for right inguinal hernia, which arose in the performance of duty on December 4, 2012.

incisional hernias present superior to the umbilicus, and advised that the hernias be fixed laparoscopically to see all of the hernias present. Based on his examination, he diagnosed incisional hernia without obstruction or gangrene and ventral hernia, also without obstruction or gangrene.

By decision dated March 8, 2018, OWCP denied appellant's claim finding that he had not met his burden of proof to establish causal relationship. It explained that he had not submitted a well-reasoned medical opinion as to how the diagnosed condition had been caused or aggravated by the accepted employment incident of January 18, 2018. Further, OWCP noted that it previously accepted appellant's December 12, 2004 claim for a right inguinal hernia, which stood in contrast with his signed statement denying prior, similar disabilities or symptoms.

On March 30, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. With his request, he included a duplicate copy of Dr. Albright's January 18, 2018 report.

By decision dated August 20, 2018, OWCP's hearing representative affirmed the March 8, 2018 denial of appellant's claim, finding that the medical evidence of record failed to provide a rationalized opinion explaining how the diagnosed condition was causally related to the accepted employment incident.

### **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 timely filed within the applicable time limitation of FECA,<sup>5</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>6</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>7</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.<sup>8</sup> Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>8</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

allegedly occurred.<sup>9</sup> The second component is whether the employment incident caused a personal injury.<sup>10</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>11</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>12</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>13</sup> 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 factor(s).<sup>14</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>15</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his hernia is causally related to the accepted January 18, 2018 employment incident.

The January 22, 2018 report from Dr. Albright provided that appellant "was lifting [a] heavy box at work when he felt pain in the front of his abdomen[,] this happened on January 18, 2018." While Dr. Albright notes a temporal relationship between the onset of pain and the accepted employment incident, he does not offer a rationalized medical opinion that the diagnosed ventral hernia without obstruction or gangrene was caused by the workplace incident. The mere fact that a condition manifests itself or is discovered after an employment incident is insufficient to establish a causal relationship between the condition and the incident.<sup>16</sup> Temporal relationship alone will not suffice for purposes of establishing causal relationship.<sup>17</sup> The Board has held that a report is of limited probative value regarding causal relationship if it does not

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<sup>9</sup> *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>10</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>12</sup> *T.H.*, *supra* note 8; *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>13</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>14</sup> *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>15</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>16</sup> *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Birger Areskog*, 30 ECAB 571 (1979).

<sup>17</sup> *Id.*

contain medical rationale explaining how a given medical condition/disability was related to employment factors.<sup>18</sup> Dr. Albright's report of January 22, 2018 does not discharge appellant's burden of proof as it lacks supporting medical rationale explaining how the employment incident had resulted in a hernia condition.

Dr. Perri's report of February 28, 2018 is similarly insufficient to meet appellant's burden. While he noted appellant's belief that the injury had been caused by and/or temporally related to the workplace incident, Dr. Perri did not offer his own medical opinion on causal relationship. Medical evidence which does not offer an opinion on causal relationship is of no probative value,<sup>19</sup> and as previously noted, temporal relationship alone is insufficient to establish causation.<sup>20</sup> Moreover, Dr. Perri noted a history of hernias for which surgical repair was required. The Board has consistently held that complete medical rationalization is particularly necessary when there are preexisting conditions involving the same body part,<sup>21</sup> and has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.<sup>22</sup> Consequently, the Board finds the medical evidence of record does not satisfy appellant's burden of proof to establish causal relationship between the diagnosed hernia and the accepted January 18, 2018 workplace 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 that his hernia is causally related to the accepted January 18, 2018 employment incident.

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<sup>18</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>19</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>20</sup> See *E.M.*, Docket No. 18-1599 (issued March 7, 2019).

<sup>21</sup> *E.g.*, *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

<sup>22</sup> See, e.g., *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2019  
Washington, DC

Christopher J. Godfrey, 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