

ISSUE

The issue is whether appellant has met his burden of proof to establish that his back condition was causally related to the accepted October 28, 2015 employment incident.

FACTUAL HISTORY

This case has previously been before the Board.⁴ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 30, 2015 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 28, 2015 he was loading a cart while in the performance of duty and when he stood up he felt a sharp back pain. He stopped work on October 28, 2015.

By decision dated December 10, 2015, OWCP denied appellant's claim. It found that the medical evidence submitted was insufficient to establish a medical diagnosis in connection with the accepted October 28, 2015 employment incident. OWCP also noted that he must also submit evidence to establish that the medically diagnosed condition was causally related to the accepted October 28, 2015 employment incident.

On December 17, 2015 appellant, through counsel, requested a hearing before an OWCP hearing representative. The hearing was held on March 3, 2016.

By decision dated May 19, 2016, the hearing representative affirmed as modified OWCP's December 10, 2015 decision. He found that the medical evidence then of record did not provide a rationalized medical opinion establishing causal relationship between the diagnosed condition and the accepted employment incident.

On September 20, 2016 appellant, through counsel, requested reconsideration.

By decision dated November 30, 2016, OWCP denied modification.

On April 10, 2017 appellant, through counsel, appealed to the Board. By decision dated August 22, 2017,⁵ the Board found that appellant had not met his burden of proof to establish a back injury causally related to the accepted October 28, 2015 employment incident. The Board explained that the record did not contain a medical report with a rationalized medical opinion, based on a complete and accurate background, explaining how the accepted employment incident physiologically caused the diagnosed back condition.

On November 28, 2017 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a report dated November 9, 2017, Dr. Steven J. Valentino, a Board-certified orthopedic surgeon, diagnosed moderate degenerative disc disease with bulge, superimposed left

⁴ *J.M.*, Docket No. 17-1002 (issued August 22, 2017).

⁵ *Id.*

posterolateral disc protrusion with moderate facet and ligamentum flavum hypertrophy resulting in severe spinal stenosis as well as mild narrowing of the central portions of the neural foramen, at L3-4. He also found that appellant had mild-to-moderate degenerative changes with mild osteophyte disc complex asymmetric to the right with severe narrowing of the right neural foramen and a grade 1 spondylolisthesis at L4-5. Dr. Valentino noted that appellant's increasing symptoms were related to the aggravation of the preexisting lumbar degenerative disc disease, spondylolisthesis, stenosis, and facet syndrome causally related to the October 28, 2015 employment incident. He indicated that torsional forces were well known to exacerbate underlying degenerative changes about the lumbar spine.

In a report dated November 27, 2017, Dr. Valentino indicated that appellant's torsional mechanism of injury was sufficient to cause an aggravation of the lumbar degenerative disc disease. He related that immediately prior to the October 28, 2015 employment incident, appellant was working full-time, full duty without ongoing back pain, and that the October 28, 2015 employment incident was a significant contributing factor leading to the aggravation of degenerative disc disease, subsequent restrictions of work, and need for treatment.

By decision dated February 21, 2018, OWCP denied modification of the August 22, 2017 decision. It found that the medical evidence submitted indicated medical findings without providing a well-rationalized opinion as to how appellant's accepted employment incident aggravated his condition. OWCP noted that appellant's physician neither differentiated the effects of the work-related injury and his preexisting condition, nor provided an accurate history that matched appellant's description of the work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁶ 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.⁷ 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.⁸

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident that is alleged to have occurred.⁹ Second, the employee must submit

⁶ *Supra* note 2.

⁷ S.S., Docket No. 17-1106 (issued June 5, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ C.P., Docket No. 18-0665 (issued November 8, 2018); see *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁹ J.F., Docket No. 18-0904 (issued November 27, 2018); *Gary J. Watling*, 52 ECAB 278 (2001).

sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁰

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.¹¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that his back condition was causally related to the accepted October 28, 2015 employment incident.

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of OWCP's November 30, 2016 decision because the Board has already considered this evidence in its August 22, 2017 decision, and found that it was insufficient to establish his claim. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.¹³ The Board will, therefore, not review the evidence addressed in the prior appeal.

Following the Board's review of the case, appellant submitted November 9 and 27, 2017 reports from Dr. Valentino. In these reports, Dr. Valentino made multiple diagnoses with regard to appellant's back condition. He opined that appellant's conditions were related to his employment incident sustained on October 28, 2015, due to a torsional mechanism, and he also opined that the employment incident aggravated a preexisting injury. A conclusory statement regarding causal relationship is of limited probative value.¹⁴ The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition is causally related to an employment incident.¹⁵

Dr. Valentino did not explain how appellant's employment incident on October 28, 2015, caused his diagnosed conditions or contributed to or aggravated his preexisting conditions. The need for medical rationale is particularly important given that Dr. Valentino indicated that

¹⁰ *S.S.*, *supra* note 7; *Deborah L. Beatty*, 54 ECAB 340 (2003).

¹¹ *N.L.*, Docket No. 17-1823 (issued December 17, 2018).

¹² *R.R.*, Docket No. 18-1093 (issued December 18, 2018); *Solomon Polen*, 51 ECAB 341 (2000).

¹³ *S.S.*, *supra* note 7; *see H.G.*, Docket No. 16-1191 (issued November 25, 2016).

¹⁴ *See B.B.*, Docket No. 18-1036 (issued December 31, 2018).

¹⁵ *J.L.*, Docket No. 17-1460 (issued December 21, 2018); *see Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

appellant had a preexisting condition.¹⁶ In cases where a claimant has a preexisting condition, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury and the preexisting condition.¹⁷ Dr. Valentino did not sufficiently explain how appellant injured his back when he stood up after loading a cart on October 28, 2015 and how this activity altered or aggravated his preexisting condition.¹⁸ While he noted that immediately prior to the October 28, 2015, appellant was working full-time, full duty without ongoing back pain, and that the October 28, 2015 employment incident was a significant contributing factor leading to the aggravation of degenerative disc disease, a medical opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.¹⁹

The Board finds that there is no medical evidence of record which contains a reasoned explanation of how the October 28, 2015 employment incident caused or aggravated appellant's diagnosed conditions.²⁰ Thus, appellant has not met his burden of proof.

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 back condition was causally related to the accepted October 28, 2015 employment incident.

¹⁶ *K.R.*, Docket No. 18-1388 (issued January 9, 2019); *see C.D.*, Docket No. 17-2011 (issued November 6, 2018).

¹⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹⁸ *See K.C.*, Docket No. 17-1693 (issued October 29, 2018).

¹⁹ *K.R.*, *supra* note 16; *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

²⁰ *J.L.*, *supra* note 15; *see George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 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