

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

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**J.P., Appellant**

**and**

**DEPARTMENT OF DEFENSE, DEFENSE  
LOGISTICS AGENCY, Fort Belvoir, VA,  
Employer**

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**Docket No. 19-1407  
Issued: February 13, 2020**

*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  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 14, 2019 appellant filed a timely appeal from a May 23, 2019 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 met his burden of proof to establish a diagnosed medical condition causally related to the accepted January 22, 2019 employment incident.

**FACTUAL HISTORY**

On January 28, 2019 appellant, then a 66-year-old distribution facilities specialist, filed a traumatic injury claim (Form CA-1) alleging that on January 22, 2019 he injured his head and back

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

when he slipped on ice on the ground and fell while in the performance of duty. He did not stop work.

Appellant submitted a February 3, 2019 a state workers' compensation medical form from Dr. Harry Wallus, Board-certified in emergency medicine. Dr. Wallus indicated that appellant fell on January 22, 2019 and diagnosed a compression fracture. He checked a box marked "yes" indicating that appellant's condition was a result of the January 22, 2019 incident. In a treatment note of even date, Dr. Wallus noted that appellant initially presented to the emergency department on January 25, 2019 complaining of worsening low back pain after slipping and falling at work, landing on his sacrum and lumbar back.

In a February 3, 2019 medical report, Dr. Devin Keefe, Board-certified in emergency medicine, provided that appellant presented with acute lumbar back pain and tenderness in the lower spine over L4-5, as well as bowel dysfunction after a mechanical slip and fall. The same day, appellant underwent a computerized tomography (CT) scan of his abdomen and pelvis interpreted by Dr. Jonathon Lee, a Board-certified diagnostic radiologist. Dr. Lee found a T12 superior endplate compression fracture with 10 percent vertebral body height loss. Appellant also underwent a magnetic resonance imaging (MRI) scan of his lumbar spine interpreted by Dr. Mark Giovannetti, a Board-certified diagnostic radiologist. Dr. Giovannetti found a compression deformity along the superior endplate of T12 with approximately 10 percent loss of height of the body. Based on this information, Dr. Keefe diagnosed appellant with a T12 superior endplate compression fracture and noted that the injury was new based on a previous October 22, 2018 CT scan that did not reveal a fracture. In his discharge instructions, he explained that compression fractures of the spine were typically caused by a compressing force, such as an auto accident or a fall.

In a development letter dated April 15, 2019, OWCP informed appellant that his claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus, limited expenses had, therefore, been authorized. However, a formal decision was now required. OWCP requested that appellant submit a narrative medical report from his physician, which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated his medical condition. It afforded him 30 days to respond. Appellant did not submit any additional evidence.

By decision dated May 23, 2019, OWCP denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with the claimed employment injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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

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<sup>2</sup> *Id.*

time limitation of FECA,<sup>3</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>4</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>5</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 at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

Rationalized medical opinion evidence is required to establish causal relationship. 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>7</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that a disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>8</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision.

In support of his claim, appellant provided a February 3, 2019 state workers' compensation medical form from Dr. Wallus wherein he noted that appellant fell on January 22, 2019 and diagnosed a compression fracture as a result.

In a February 3, 2019 report, Dr. Keefe diagnosed a T12 superior endplate compression fracture based on a review of a CT scan of appellant's abdomen and pelvis and an MRI scan of his lumbar spine, specifically noting that the findings were new in comparison to an October 22, 2018 diagnostic study that revealed no positive findings.

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<sup>3</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</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>5</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

<sup>7</sup> *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

<sup>8</sup> *D.H.*, Docket No. 18-1410 (issued March 21, 2019).

As the medical evidence of record establishes a diagnosed condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>9</sup>

**CONCLUSION**

The Board finds that the case is not in posture for decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: February 13, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>9</sup> *E.C.*, Docket No. 19-0854 (issued October 17, 2019).