



## ISSUE

The issue is whether appellant has met his burden of proof to establish lumbar conditions causally related to the accepted August 23, 2018 employment incident.

## FACTUAL HISTORY

On August 30, 2018 appellant, then a 57-year-old ship fitter, filed a traumatic injury claim (Form CA-1) alleging that on August 23, 2018 he sustained injuries to his lower back and right leg when he slipped on a water puddle while in the performance of duty. He stopped work that day. In an undated statement attached to an August 23, 2018 employing establishment incident report and medical referral form, appellant recounted that after class he was on his way to work on a living barge when he slipped on a puddle and fell down onto a concrete block in a parking lot.

In an August 27, 2018 return to work note, Dr. Donald L. Cochran, a Board-certified family practitioner, related that appellant was under his care and could return to work on September 3, 2018. In an August 28, 2018 letter, he referred appellant to a spine center for chronic back pain.

On September 20, 2018 Dr. Cochran related that appellant was totally disabled until September 26, 2018.

In a September 21, 2018 work restriction form, Dr. Matthew J. Hickey, an osteopathic physician Board-certified in internal medicine, reported an injury of “lower back” and indicated that appellant was totally disabled.

In a September 26, 2018 progress report, Dr. Nickolas L. Pezzella, a Board-certified physical medicine and rehabilitation physician, recounted that on August 23, 2018 appellant had a fall at work with an immediate onset of right-sided low back pain radiating into the right hip. He reviewed appellant’s history and conducted an examination. Range of motion was passive in all four extremities and sensation was decreased to light touch in the right lower extremity. Dr. Pezzella reported that straight leg raise testing and Hoffman’s testing were negative bilaterally. He related that lumbar films revealed slight anterolisthesis of L5 on S1, mild disc space narrowing at L4-5, and anterior osteophytes at L3, L4, and L5. Dr. Pezzella diagnosed low back pain, lumbar degenerative disc disorder (DDD), lumbosacral spondylosis with myelopathy, lumbar neuritis, and spondylolisthesis. He completed a work status note, which recommended that appellant remain out of work until October 24, 2018.

In a September 27, 2018 work restriction form, Julie Behnke, a certified physician assistant, placed appellant off work until October 24, 2018.

In an October 1, 2018 attending physician’s report (Form CA-20), Dr. Pezzella reported that x-ray examination revealed acute deformity or spondylolisthesis. He diagnosed low back pain at multiple sites and lumbar degenerative disc disease. Dr. Pezzella checked a box marked “yes” indicating that appellant’s condition was caused or aggravated by the above-described employment activity.

On October 18, 2018 appellant began to file wage-loss compensation claim forms (Form CA-7) for total disability beginning October 8, 2018.

In an October 18, 2018 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the factual and medical evidence necessary to establish his claim and also provided a questionnaire for completion. OWCP afforded appellant 30 days to provide the necessary factual information and medical evidence. In a separate letter of even date, it also requested additional information from the employing establishment

OWCP received diagnostic testing dated October 8, 2018. A lumbar spine magnetic resonance imaging (MRI) scan report demonstrated moderate-sized disc bulge with large right paracentral extrusion at the L5-S1, moderate-to-severe narrowing of the right L5-S1 lateral recess, severe right and moderate left foraminal stenosis at level 2, mild-bilateral foraminal stenosis at L3-4 and L4-5. A lumbar spine x-ray examination revealed no evidence of metallic object in the orbits.

In an October 24, 2018 progress report, Dr. Pezzella indicated that appellant was seen for follow-up and reviewed appellant's October 8, 2018 diagnostic testing and conducted an examination. He diagnosed lumbar DDD, spondylolisthesis, lumbosacral spondylosis without myelopathy, and lumbar herniated nucleus pulposus (HNP).

OWCP received an October 8, 2018 print-out which listed appellant's various laboratory and diagnostic testing results, general medical care plan, patient history, and list of active conditions.

In an October 26, 2018 work restriction form, Dr. Elizabeth C. Merrell, an osteopathic physician, indicated that appellant was temporarily totally disabled.

In a completed questionnaire form dated November 16, 2018, appellant related that he experienced bad back pain between the date of his injury and the date he first received medical attention. He noted that he immediately reported his fall to his supervisor. Appellant responded "No" indicating that he did not sustain any other injury on the date of injury and that he did not have similar disabilities or symptoms before the injury. He also clarified that the injury occurred on the employing establishment's premises in its parking lot.

On November 16, 2018 OWCP also received the employing establishment's response to its development letter. It responded "yes" indicating that appellant's injury occurred on the premises which were owned, operated, and controlled by the employing establishment. The employing establishment noted that he was returning from training and that he was authorized to be in the parking lot.

In a November 19, 2018 Form CA-20, Dr. Pezzella related that a lumbar spine MRI scan revealed right paracentral disc bulge at L5-S1. He diagnosed lumbar DDD, lumbar HNP, and spondylolisthesis. Dr. Pezzella checked a box marked "yes" indicating that appellant's condition was caused or aggravated by the above-described employment activity.

In a November 26, 2018 letter, Dr. Pezzella responded to OWCP's development letter. He indicated that appellant was examined on September 26 and October 24, 2018. Dr. Pezzella provided a history of injury of "[August 23, 2018,] fall at work." He reported examination findings of right-sided low back pain radiating into the right hip and bilateral lower extremities. Dr. Pezzella noted appellant's diagnostic imaging test results and diagnosed DDD, spondylolisthesis, lumbosacral spondylosis without myelopathy, and lumbar HNP. He related that the patient reported "fall resulting in pain" and that an MRI scan demonstrated disc herniation.

In a November 26, 2018 return to work note, Dr. Pezzella placed appellant off work until January 4, 2019.

By decision dated November 28, 2018, OWCP denied appellant's claim. It accepted that the August 23, 2018 incident occurred as alleged and that lumbar conditions had been diagnosed, however, it denied his claim finding that he had failed to establish causal relationship between the accepted employment incident and the diagnosed conditions.

On December 21, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on April 10, 2019.

Appellant submitted a November 26, 2018 progress report by Dr. Pezzella, who noted appellant's August 23, 2018 history of injury and the medical treatment that he had received. Dr. Pezzella related that appellant reported that his pain location and distribution remained unchanged. He provided examination findings and diagnosed lumbar DDD, spondylolisthesis, lumbosacral spondylosis without myelopathy, and other intervertebral disc displacement of the lumbar region.

By decision dated June 25, 2019, an OWCP hearing representative affirmed the November 28, 2018 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</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>4</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

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<sup>3</sup> *Id.*

<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.<sup>5</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>6</sup>

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.<sup>7</sup> There are two components involved in establishing 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.<sup>8</sup> Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>9</sup>

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 factor(s) identified by the employee.<sup>11</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish lumbar conditions causally related to the accepted August 23, 2018 employment incident.

In his reports of September 26, October 24, and November 26, 2018, Dr. Pezzella described the August 23, 2018 history of injury and provided examination findings. He diagnosed low back pain, lumbar DDD, lumbosacral spondylosis with myelopathy, lumbar neuritis, and spondylolisthesis. Dr. Pezzella did not offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's

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<sup>5</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>6</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>7</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

<sup>8</sup> *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>9</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>10</sup> *See S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

<sup>11</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>12</sup> *James Mack*, 43 ECAB 321 (1991).

condition or disability is of no probative value on the issue of causal relationship.<sup>13</sup> As such, the Board finds that these reports are insufficient to establish appellant's claim.

In CA-20 forms dated October 1 and November 19, 2018, Dr. Pezzella checked a box marked "yes" indicating that appellant's condition was caused or aggravated by the above described employment activity. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.<sup>14</sup> Dr. Pezzella's opinion is therefore insufficient to establish appellant's claim.<sup>15</sup>

Appellant also submitted work status notes and letters dated August 27 to September 20, 2018 from Dr. Cochran who indicated that appellant was being referred for chronic back pain. Symptoms of pain, however, are not considered compensable diagnoses.<sup>16</sup>

Neither Dr. Hickey nor Dr. Merrell provided an opinion on causal relationship. As such, their reports are of no probative value and are insufficient to establish appellant's claim.<sup>17</sup>

The October 8, 2018 lumbar spine MRI scan and x-ray examination are also insufficient to establish appellant's claim. The Board has held that reports of diagnostic tests, standing alone, lack probative value as they do not provide an opinion on causal relationship between his employment duties and the diagnosed conditions.<sup>18</sup>

Appellant also received treatment from Ms. Behnke, a certified physician assistant. Ms. Behnke's September 27, 2018 work restriction form is of no probative value because a physician assistant is not considered a physician as defined under FECA.<sup>19</sup>

On appeal counsel argues that the decision was contrary to law and fact. As explained above, appellant has the burden of proof to establish that the employment incident caused a personal injury.<sup>20</sup> Because appellant has not submitted rationalized medical evidence establishing

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<sup>13</sup> See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>14</sup> *T.R.*, Docket No. 18-1272 (issued February 15, 2019); *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>15</sup> See *E.H.*, Docket No. 19-1282 (issued December 23, 2019).

<sup>16</sup> *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *I.M.*, Docket No. 19-1038 (issued January 23, 2010); *C.F.*, Docket No. 08-1102 (issued October 2008).

<sup>17</sup> See *supra* note 13.

<sup>18</sup> *G.S.*, Docket No. 18-1696 (issued March 26, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

<sup>19</sup> 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See also *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *George H. Clark*, 56 ECAB 162 (2004) (physician assistant).

<sup>20</sup> *Supra* note 9.

that his diagnosed lumbar conditions are causally related to the accepted August 23, 2018 employment incident, the Board finds that he has not met his burden of proof to establish his claim.

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 lumbar conditions causally related to the accepted August 23, 2018 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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