



## **FACTUAL HISTORY**

On May 10, 2021 appellant, then 62-year-old information technology management employee, filed a traumatic injury claim (Form CA-1) alleging that on April 7, 2021 he sustained a back injury, with pain radiating down his legs. when he twisted while removing a server from a rack in the performance of duty. He did not stop work.

In a development letter dated May 11, 2021, OWCP advised appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a report dated May 12, 2021, Dr. Vicki Colapietro, Board-certified in family practice, related that appellant had injured his lower back one month prior while lifting equipment. Appellant reported incidents of sharp pain shooting down both legs, thighs, and groin since the incident. She diagnosed bilateral low back pain with bilateral sciatica.

OWCP received a form report dated May 12, 2021 from Dr. Colapietro, who released appellant to return to work with restrictions on May 12, 2021, with an anticipated return to full duty on June 12, 2021.

Dr. Colapietro, in a prescription note also dated May 12, 2021, related appellant's complaints of back pain, and left hip radicular pain. She referred appellant to a neurosurgeon.

By decision dated June 11, 2021, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted April 7, 2021 employment incident.

On June 21, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received a progress note dated May 12, 2021 from Dr. Colapietro in which she related that on April 7, 2021 appellant felt shooting pain down his legs while helping to lift some heavy items. Dr. Colapietro also noted appellant's medical history of chronic midline thoracic pain since falling from a roof in 2017. She related that appellant's physical examination findings reflected no weakness or numbness, no gait problems or myalgia, decreased lumbar range of motion (ROM), negative bilateral straight leg raising, and no lumbar swelling, spasms, tenderness or edema. Dr. Colapietro diagnosed bilateral low back pain with bilateral sciatica.

OWCP also received an encounter report dated June 1, 2021 from Danyelle M. Owen, a physician assistant. Ms. Owen noted appellant's history of injury and provided examination findings. She diagnosed chronic midline low back pain without sciatica.

In a report dated July 9, 2021, Dr. Agostino J. Visioni, Board-certified in neurosurgery, related that while appellant was helping a coworker lift some heavy equipment on April 7, 2021 he felt shooting pain down his legs. He provided appellant's physical examination findings and reviewed a June 28, 2021 magnetic resonance imaging (MRI) scan. Dr. Visioni diagnosed lumbar stenosis with neurogenic claudication, lumbar spondylosis, lumbar disc herniation, and spondylotic changes with L4-5 changes and small disc herniation. He explained that any of these findings might be contributing to appellant's lumbar pain.

In progress notes dated July 12, 2021, Dr. Antonio Edgardo Valdes-Dapena, a Board-certified family medicine specialist, noted appellant's history of injury and reviewed diagnostic tests. He diagnosed acute midline low back pain with left-sided sciatica, likely aggravated by the April 7, 2021 employment incident, and chronic midline thoracic back pain.

A telephonic hearing was held before a representative of OWCP's Branch of Hearings and Review on November 9, 2021.

In a report dated December 3, 2021, Dr. Valdes-Dapena, noted findings from a June 28, 2021 MRI scan. He diagnosed lumbar spondylosis, multilevel multi factorial stenosis accentuated at L4-5 and L5-S1 by disc herniation, and chronic midline low pain with right-sided sciatica. Dr. Valdes-Dapena indicated that appellant continued to have lumbosacral pain after the April incident. He noted that appellant's pain was undoubtedly chronic, predated the April event, and had been aggravated by lifting on April 7, 2021.

By decision dated January 10, 2022, OWCP's hearing representative affirmed the June 11, 2021 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 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 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>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. 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 and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.<sup>7</sup>

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

<sup>4</sup> *C.W.*, Docket No. 21-1095 (issued May 20, 2022); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *C.W.*, *id.*; *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *C.W.*, *id.*; *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *A.D.*, Docket No. 21-1205 (issued January 13, 2022); *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>8</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 specific employment incident identified by the employee.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted April 7, 2021 employment incident.

OWCP received a report dated May 12, 2021 from Dr. Colapietro, noting that appellant had injured his lower back approximately one month prior while lifting heavy equipment. Dr. Colapietro reported a low back injury. In a prescription note of even date, she diagnosed back pain with left hip radicular pain. Dr. Colapietro released appellant to return to work with restrictions in a May 12, 2021 return to work form. The Board has held that pain is a description of a symptom, not a diagnosis of a medical condition.<sup>10</sup> A medical report lacking a firm diagnosis is of no probative value.<sup>11</sup> These reports are, therefore, insufficient to establish a diagnosed medical condition causally related to the accepted employment incident.

In another May 12, 2021 progress note, Dr. Colapietro noted appellant's April 7, 2021 work incident and diagnosed bilateral sciatica. Similarly, Dr. Visioni, in a July 9, 2021 report noted the April 7, 2021 employment incident and diagnosed lumbar stenosis with neurogenic claudication, lumbar spondylosis, and lumbar disc herniation. Neither physician, however, provided an opinion on the cause of appellant's condition. The Board has long held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.<sup>12</sup> Therefore, these reports are insufficient to establish appellant's claim.

OWCP received progress notes dated July 12, 2021 and a report dated December 3, 2021 from Dr. Valdes-Dapena. In the July 12, 2021 progress note, Dr. Valdes-Dapena diagnosed acute midline low back pain with sciatica, which he opined had likely been aggravated by the April 7, 2021 employment incident. He also diagnosed chronic midline thoracic back pain. In a report dated December 3, 2021, Dr. Valdes-Dapena diagnosed lumbar spondylosis, multilevel multi factorial stenosis accentuated at L4-5 and L5-S1 by disc herniation, and chronic midline low back pain with right-sided sciatica. While he related that appellant's pain was chronic, he opined that it had been aggravated by the April 7, 2021 employment incident. As previously noted, pain is a

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<sup>8</sup> *A.D., id.*; *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *C.W.*, *supra* note 4; *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *Id.*

<sup>11</sup> *K.V.*, Docket No. 22-0698 (issued August 22, 2022); *E.S.*, Docket No. 21-0189 (issued November 16, 2021); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

<sup>12</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018); *see also Charles H. Tomaszewski*, 39 ECAB 461 (1988).

description of a symptom, not a diagnosis of a medical condition.<sup>13</sup> Furthermore, Dr. Valdes-Dapena did not offer a rationalized medical opinion as to the cause of the diagnosed lumbar spondylosis, multilevel multi factorial stenosis accentuated at L4-5 and L5-S1 by disc herniation, and chronic right-sided sciatica. The Board has held that a medical opinion should reflect a correct history and offer a medically-sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.<sup>14</sup> As Dr. Valdes-Dapena provided insufficient rationale supporting his opinion regarding causal relationship, the Board finds that his reports are insufficient to establish causal relationship.

Appellant also provided an encounter report from Ms. Owen, a physician assistant. The Board has long held that certain healthcare providers such as physician assistants are not considered physicians under FECA.<sup>15</sup> Consequently, her findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>16</sup>

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted employment incident, the Board finds that 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(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 medical condition causally related to the accepted April 7, 2021 employment incident.

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<sup>13</sup> See *D.M.*, Docket No. 21-1244 (issued March 25, 2022); *E.S.*, Docket No. 21-0189 (issued November 16, 2021); *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.R.*, Docket No. 18-1408 (issued March 1, 2019); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

<sup>14</sup> *T.G.*, Docket No. 21-0175 (issued June 23, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); see *K.W.*, Docket No. 19-1906 (issued April 1, 2020).

<sup>15</sup> Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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). See also *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *A.C.*, Docket No. 20-1510 (issued April 23, 2021) (physician assistants are not physicians as defined by FECA).

<sup>16</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 10, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 2022  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board