

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

I.W., Appellant	)	
	)	
and	)	Docket No. 23-0567
	)	Issued: October 25, 2023
DEPARTMENT OF DEFENSE, DEFENSE	)	
COMMISSARY AGENCY, CHERRY POINT	)	
COMMISSARY, Cherry Point, NC, Employer	)	
	)	

*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  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 13, 2023 appellant filed a timely appeal from a February 7, 2023 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 February 7, 2023 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 her burden of proof to establish a lumbar spine condition causally related to the accepted November 18, 2021 employment incident.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> 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 November 30, 2021 appellant, then a 63-year-old store worker, filed a traumatic injury claim (Form CA-1), alleging that on November 18, 2021 she pulled a cart into the chill freezer to process items from an online order and ran into a pallet hand jack that had been stored improperly at the entrance to the freezer while in the performance of duty. She stated that she was "jerked hard" and experienced the onset of back pain. M.O., appellant's supervisor, controverted the claim in a December 1, 2021 statement. She acknowledged that a pallet jack had been left by the chill freezer door, and that appellant had pulled items from a cart and scanned them for bagging. However, M.O. alleged that appellant had not reported a back injury at that time. She did not stop work.

In support of her claim, appellant provided a November 29, 2021 report of a November 18, 2021 examination by Dr. Douglas DeSantis, a Board-certified anesthesiologist. Dr. DeSantis recounted the November 18, 2021 employment incident when she "walked into something that was out of its normal position," and experienced the onset of back pain. On examination, he observed left-sided sacroiliac tenderness to palpation, and left-sided sacroiliac pain when rising from a flexed position to standing upright. Dr. DeSantis provided an assessment of "[s]acro ilial pain" and prescribed medication. He noted that appellant had been under work restrictions at the time of the November 18, 2021 employment incident.

In a development letter dated February 11, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence needed, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a report dated February 17, 2022, Dr. DeSantis noted the November 18, 2021 employment incident, and that appellant had sustained chronic sciatica from a prior occupational injury. He explained that, during the November 29, 2021 examination, she "was found to have sacroiliac discomfort related to trauma at work." Dr. DeSantis did not obtain x-rays. He prescribed anti-inflammatory medication and recommended physical therapy. Dr. DeSantis concluded that the mechanism of injury appellant had described "correlated with the physical exam[ination] findings."

Appellant submitted a February 18, 2022 statement recounting that on November 18, 2021 she pushed a grocery cart into the freezer and struck a pallet jack, causing jerking forces to her

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<sup>3</sup> Docket No. 22-1065 (issued January 3, 2023).

back and the onset of severe pain. She noted that, at the time of the injury, she had been on work restrictions from an April 23, 2019 employment injury when she had been kicked in the back by a customer. Appellant also provided two coworker witness statements who corroborated the November 18, 2021 employment incident and a November 20, 2021 employing establishment accident report confirming that a pallet jack had been improperly stored at the cooler entrance.

By decision dated March 23, 2022, OWCP accepted that appellant struck a pallet jack at the entrance to a chill freezer in the performance of duty on November 18, 2021, as alleged. However, it denied her claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted November 18, 2021 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 12, 2022 appellant requested reconsideration. In supporting statements dated April 7, 2022, she contended that she had submitted additional information that was not included in the case record, and that her supervisor saw the pallet jack on November 18, 2021 and realized that she had been injured.

On April 12, 2022 OWCP received an April 4, 2022 report by Dr. DeSantis noting the November 18, 2021 employment injury. Dr. DeSantis explained that, during his November 29, 2021 examination, he observed “inflammation of [appellant’s] sacroiliac joint and evidence of piriformis spasm on the left side related to the trauma.” He prescribed anti-inflammatory medication and recommended physical therapy. Dr. DeSantis opined that the mechanism of injury appellant described correlated with the findings on physical examination. Appellant also submitted documents previously of record.

By decision dated July 5, 2022, OWCP denied appellant’s request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On July 11, 2022 appellant appealed to the Board. By decision dated January 3, 2023, the Board affirmed the March 23, 2022 decision, finding that appellant had not met her burden of proof to establish a diagnosed medical condition in connection with the accepted November 18, 2021 employment incident.<sup>4</sup> Additionally, the Board set aside the July 5, 2022 decision, finding that appellant had submitted new, relevant evidence on reconsideration requiring a review of the merits of the claim. The case was remanded for a merit review of the evidence submitted on reconsideration and issuance of an appropriate merit decision on appellant’s claim.

On remand, appellant requested reconsideration and submitted additional medical evidence.

July 12, 2022 x-rays of the lumbar spine demonstrated mild scoliosis, minimal degenerative anterolisthesis at L4-5, and disc space narrowing and degeneration at L4-5 and L5-S1.

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<sup>4</sup> *Id.*

In a January 20, 2023 report, Dr. DeSantis recounted that appellant’s low back pain “initially began with [an] assault at work and it was reinjured by another event at work.” Physical therapy improved her symptoms, but had only been authorized by OWCP for a brief period. On examination, Dr. DeSantis observed point tenderness to palpation in the lumbosacral region, limited flexion of the back secondary to discomfort, and no radicular symptoms. He diagnosed “[d]egenerative disc disease of the lumbosacral spine with aggravation of the injuries due to episodes at her workplace.” Dr. DeSantis recommended additional physical therapy and prescribed medication.

By decision dated February 7, 2023, OWCP found that appellant had established a medical diagnosis in connection with the accepted November 18, 2021 employment incident. The claim remained denied, however, because OWCP found that the medical evidence of record was insufficient to establish causal relationship between a diagnosed condition and the accepted November 18, 2021 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 and that the claim was filed within the applicable time limitation period of FECA,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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. Fact of injury consists of two components, which must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident which is alleged to have occurred.<sup>8</sup> The second component is whether the employment incident caused a personal injury.<sup>9</sup>

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<sup>5</sup> See *R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *Y.K.*, Docket No. 18-0806 (issued December 19, 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> *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *D.C.*, Docket No. 18-1664 (issued April 1, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

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>10</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>11</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lumbar spine condition causally related to the accepted November 18, 2021 employment incident.

Preliminarily, the Board notes that it is unnecessary to reconsider the evidence appellant submitted prior to the issuance of OWCP's March 23, 2022 decision because the Board already considered this evidence in its January 3, 2023 decision. Findings made in prior Board decisions are *res judicata* any further review by OWCP under section 8128 of FECA.<sup>12</sup>

Dr. DeSantis, in an April 4, 2022 report, attributed sacroiliac joint inflammation and left-sided piriformis spasm to the November 18, 2021 employment incident as the mechanism of injury appellant described correlated with the objective physical findings. Although he supported causal relationship, he failed to provide medical rationale explaining the basis of his conclusory opinion. The Board has held that without explaining, physiologically, how the incident on November 18, 2021 caused or aggravated the diagnosed condition, Dr. DeSantis' April 4, 2022 medical report is of limited probative value and insufficient to establish appellant's claim.<sup>13</sup>

In his January 20, 2023 report, Dr. DeSantis opined that a workplace assault and a subsequent employment incident had aggravated appellant's lumbosacral degenerative disc disease. However, the Board has held that a conclusory opinion lacking rationale is of limited probative value on the issue of causal relationship.<sup>14</sup> Therefore, this evidence is insufficient to establish the claim.

OWCP also received a report of July 12, 2022 x-rays of the lumbar spine. The Board has held that diagnostic studies, standing alone, lack probative value and are insufficient to establish

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<sup>10</sup> *H.B.*, Docket No. 18-0781 (issued September 5, 2018).

<sup>11</sup> *D.H.*, Docket No. 18-1410 (issued March 21, 2019).

<sup>12</sup> *See C.B.*, Docket No. 19-0121 (issued July 2, 2019); *B.R.*, Docket No. 18-0339 (issued January 24, 2019); *J.W.*, Docket No. 17-0715 (issued May 29, 2018); *G.P.*, Docket No. 14-1150 (issued September 15, 2014); *J.F.*, 58 ECAB 124 (2006); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998).

<sup>13</sup> *R.N.*, Docket No. 21-0884 (issued March 30, 2023); *S.K.*, Docket No. 20-0102 (issued June 12, 2020); *M.M.*, Docket No. 20-0019 (issued May 6, 2020).

<sup>14</sup> *J.O.*, Docket No. 19-0326 (issued July 16, 2019); *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

the claim.<sup>15</sup> Consequently, this additional evidence is insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a lumbar spine condition causally related to the accepted November 18, 2021 employment incident, the Board finds that appellant has not met her burden of proof to establish her 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 her burden of proof to establish a lumbar spine condition causally related to the accepted November 18, 2021 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** February 7, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> *J.G.*, Docket No. 21-1082 (issued March 29, 2023); *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).