



## **FACTUAL HISTORY**

On November 3, 2014 appellant, then a 47-year-old delivery bar code sorter (DBCS) clerk, filed a traumatic injury claim alleging that on October 27, 2014, while clearing a jam on the bottom row of the machine, she hurt her lower back on the right side of her spine.

In support of her claim, appellant submitted an October 27, 2014 report by Dr. Robert Bayer, a physician Board-certified in emergency medicine, indicating that appellant was seen and treated on October 27, 2014 at the Yale New Haven Emergency Department and was diagnosed with muscle spasm. In a November 17, 2014 note, Dr. Bayer again noted that appellant presented with back pain on October 27, 2014 that occurred while bending over to fix a machine at her place of employment.

Appellant received treatment from Dr. Jaimy Honig, an internist, from October 30 through November 28, 2014. In an October 28, 2014 report, Dr. Honig noted that appellant was at work the previous night when the machine stopped working, that she tried to get a piece of mail out of the machine, and that when she bent and pulled the right side of her back began to hurt. She diagnosed appellant with persistent lumbago and submitted multiple work excuses and duty status reports finding that appellant was totally disabled from work from October 30 through December 26, 2014. On October 30, 2014 Dr. Honig referred appellant to physical therapy for “medical reasons.” In a November 8, 2014 report, she again diagnosed appellant with lumbago due to a work accident, and stated that appellant felt incapacitated to perform her employment activities of bending and lifting. Dr. Honig noted that appellant had a prescription for physical therapy, but had not gone due to not having a workers’ compensation number so that the cost would be covered. She emphasized that appellant must do physical therapy to get better, and that if she does not get physical therapy, she will remain incapacitated. In a November 28, 2014 report, Dr. Honig diagnosed appellant with unspecified accident, lumbago, allergic rhinitis, asthma, depressive disorder, and unspecified hypertension. She noted that appellant was still disabled due to an employment injury. The record also contains reports from Dr. Honig’s colleague, Dr. Jorge Moreno, a Board-certified internist. In an October 28, 2014 report, Dr. Moreno assessed appellant with lumbago due to an employment injury.

Appellant submitted physical therapy notes from Temple Physical Therapy for November and December 2014.

In a December 10, 2014 report, Dr. John O’Brien, a Board-certified orthopedic surgeon, assessed appellant with lumbar disc degeneration and ordered more physical therapy for appellant. He recommended a gradual return to work with restrictions.

By letter dated December 17, 2014, OWCP informed appellant that further information was needed to support her claim.

In reports dated December 10, 2014 and January 7, 2015, Dr. Regina Eum, a Board-certified physiatrist, noted that appellant presented with right lower back pain which occasionally radiated to the right butt cheek, but not currently into the leg. She noted that appellant first noticed the pain on October 27, 2014 while at work when she reached down to pull out mail that was stuck and suddenly developed sharp right back pain. Dr. Eum assessed appellant with

lumbar disc degeneration, lumbar spondylosis, and lumbago. She ordered an x-ray and on December 18, 2014 Dr. Lucille Soldano, a Board-certified diagnostic and nuclear radiologist, interpreted an x-ray of appellant's lumbar spine as showing no fracture or misalignment.

By decision dated January 21, 2015, OWCP denied appellant's claim. It determined that, although appellant had established that an employment incident occurred and had established medical diagnoses of lumbar disc degeneration and lumbar spondylosis, she had not established that her medical conditions were caused or aggravated by the accepted employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing 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 period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. 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>2</sup>

In order to determine whether an employee actually sustained an 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>3</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>4</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a 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.<sup>5</sup>

### **ANALYSIS**

Appellant has established that an employment incident occurred while in the performance of her duties on October 27, 2014 when she cleared a jam on a machine. She also established

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<sup>2</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>3</sup> *See Elaine Pendleton*, 40 ECAB 1143; *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (August 2012).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>5</sup> *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

that she had diagnosed medical conditions of lumbar disc degeneration and lumbar spondylosis. However, OWCP denied appellant's claim, finding that she failed to establish a causal relationship between her diagnosed medical conditions and her accepted employment incident.

The medical evidence of record does not establish such a causal relationship. Initially, the Board finds that physical therapist notes have no probative value as a physical therapist is not a physician as defined by FECA.<sup>6</sup>

Appellant also submitted multiple reports by Dr. Honig. Dr. Honig and her colleague, Dr. Moreno, diagnosed appellant with lumbago causally related to the October 27, 2014 employment incident, and opined that appellant was disabled due to this pain. However, lumbago, *i.e.*, pain in the lumbar region, is not considered by the Board to be a medical diagnosis. The Board has consistently held that pain is a description of a symptom rather than a compensable medical diagnosis.<sup>7</sup> Without medical rationale explaining how and why the lumbago resulted from appellant's employment and disabled her from working, these reports are insufficient to establish her claim.

Similarly, Dr. Bayer treated appellant for back pain and muscle spasm on the date of the employment incident. Again, back pain and muscle spasm are symptoms, not medical diagnoses. Dr. Soldano interpreted appellant's x-ray and noted no fracture or misalignment of the lumbar spine. She did not diagnose a medical condition nor did she discuss appellant's employment.

Dr. O'Brien diagnosed appellant with lumbar disc degeneration. Dr. Eum diagnosed appellant with lumbar disc degeneration and lumbar spondylosis. Although these are medical diagnoses, neither Dr. O'Brien nor Dr. Eum give an opinion providing medical rationale as to how these diagnoses were caused or aggravated by appellant's accepted employment incident of October 27, 2014.

As noted, causal relationship is a medical question that must be established by a probative medical opinion from a physician.<sup>8</sup> The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which this incident would have caused or aggravated his condition.<sup>9</sup> Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that the condition was caused by

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<sup>6</sup> The term 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. § 8102(2); *J.G.*, Docket No. 15-251 (issued April 13, 2015); *A.C.*, Docket No. 08-1453 (issued November 18, 2008) (records from a physical therapist do not constitute competent medical opinion in support of causal relation, as physical therapists are not physicians as defined under FECA).

<sup>7</sup> *See D.H.*, Docket No. 14-1852 (issued January 27, 2015).

<sup>8</sup> *W.P.*, Docket No. 14-1076 (issued September 18, 2014).

<sup>9</sup> *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

her employment is sufficient to establish causal relationship.<sup>10</sup> Because appellant has not provided such medical opinion evidence in this case, she has failed to meet her 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 did not meet her burden of proof to establish that she sustained an injury in the performance of duty on October 27, 2014, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 21, 2015 is affirmed.

Issued: May 13, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).