

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

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**A.O., Appellant** )  
 )  
**and** ) **Docket No. 10-2118**  
 ) **Issued: June 9, 2011**  
**DEPARTMENT OF COMMERCE, U.S.** )  
**CENSUS BUREAU, Panorama, CA, Employer** )  

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*Appearances:*

*Alan J. Shapiro, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 17, 2010 appellant, through her representative, filed a timely appeal from the June 9, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which found that she did not establish the alleged injury. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> 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 sustained a low back injury in the performance of duty on May 13, 2009.

**FACTUAL HISTORY**

On May 14, 2009 appellant, a 54-year-old recruiting assistant, filed a claim for compensation benefits alleging that she injured her low back in the performance of duty two

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

days earlier: “While testing and helping applicants to complete their packets for employment I walked from applicant to applicant when suddenly a pain from my back traveled down my right leg and I could not stand up.” Statements from two of the three applicants she was testing confirmed that she felt a sharp pain in her right hip and leg on May 12, 2009, which made it impossible for her to walk. They helped appellant sit down, helped her put her boxes into her vehicle and took her to the hospital.

Appellant provided the following history to her orthopedic surgeon, Dr. Jalil Rashti, on May 19, 2009: “[Appellant] was helping applicants at work put packets together when [she] felt sudden sharp pain in her back with sharp pain into right leg into ankle.” In a revised narrative report that, date, Dr. Rashti provided an extra detail:

“[Patient] states that on May 12, 2009 she was helping applicants put their packets together, which consisted of walking and she felt sudden pain in her back which traveled to her stomach and lateral down her right leg. The [pain] became excruciating and went from her leg down to her ankle. An applicant helped the patient sit in a chair and she reported the injury to her office [manager,] Elizabeth on 05/12/09.”

Appellant advised that her past medical history included a herniated disc. Dr. Rashti noted that she had injured her back in a 1999 automobile accident, which required treatment for five months and injured her back at work in 2005, “which lasted several years.” He also noted that, prior to the recent incident, appellant exercised five days a week for three hours. Dr. Rashti diagnosed lumbar radiculopathy, rule out lumbar spine displacement and lumbar spine muscle spasm.

A June 12, 2009 magnetic resonance imaging scan showed L4-5 left-sided spondylolysis and L5-S1 bilateral spondylolysis, together with broad-based posterior disc bulging and mild bilateral foraminal and central canal narrowing at both levels.

In a July 31, 2009 decision, OWCP denied appellant’s claim for compensation benefits. It found that the medical evidence did not establish that the claimed low back condition was related to the established work-related event.

Appellant requested a hearing before OWCP’s hearing representative and stated:

“I wanted to make it clear that I put all of my supplies in a crate which I carried in and out of the places I gave the test. Along with the crate I carried in boxes of forms used by the applicants applying for the jobs. The crate and boxes were the items I carried in and out of the venues. Which cause me to experience the pain in my back and the electrical shocks down my right leg.”

On September 13, 2009 Dr. Rashti opined that appellant had an insidious exacerbation of her lumbar spine condition. Addressing the mechanism of injury, he noted that she was helping applicants put their packets together at work and picking up crates weighing approximately 30 pounds, which contained testing material, forms, pens and pencils. Dr. Rashti stated that the mechanism of injury was reasonable and credible to cause appellant’s multiple lumbar disc herniations and current symptomatology.

In a telephone conference on March 22, 2010, appellant's representative noted the seeming inconsistency in the medical history and asked appellant to explain. Appellant recounted what happened on May 12, 2009:

“On May 12 I was scheduled to test individuals at the Lancaster Employment Office in Lancaster, California and I arrived there maybe about 9:00. And what happened is I kept all of my booklets, the test booklets, the answer sheets, all the paperwork related to recruiting someone for a job with the census in a crate. And I would lift the crate and bring it into wherever I would be testing. Well, on that day I brought the crate in and I brought it in, set it down on the table. I think I had two crates that day. And I set them down on the table and I commenced to test and I was -- as I lift crates from one table to the other to get ready for the test set up. You know, I had everything set up. I knew how many people were going to be there to test. I arranged everything for them and I think in the lifting of the crate is when I started to feel -- I felt a little something in my back, but it wasn't nothing much. So I commenced sort of like to ignore it, but then as I set everyone up and they were testing I started to walk around the room. And then immediately the actual pain as if I had just, you know, got injured hit me and I was actually about to fall down until one of the testers held me.”

Asked why her claim for benefits did not mention lifting crates, appellant testified that she did not know. She recalled that, when a gentleman from the employing establishment came to collect her work, he stated it was no wonder: “If you have a back problem you shouldn't be lifting this crate because even though it seemed like, you know, just papers and pencils and you know, booklets and it seemed like it wouldn't weigh that much, but I imagine that it did. It weighed too much for me to lift.” Appellant added that she arrived at about 9:00 a.m.: “because I like to test at 10:00.” She set up the room. Appellant estimated that she felt the big jolt of pain close to 11:20 or 11:30 a.m., because she was at the hospital by noon.

In a decision dated June 9, 2010, OWCP's hearing representative affirmed the denial of appellant's claim for benefits. He found that Dr. Rashti did not base his opinion on an accurate history of what happened on May 12, 2009 because the pain did not occur when she lifted crates but while she was walking in the testing room one and a half hours later. He noted that Dr. Rashti did not account for the delay or make clear whether the events that day precipitated appellant's diagnosed condition or aggravated a prior back condition.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>2</sup> An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the

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<sup>2</sup> 5 U.S.C. § 8102(a).

time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.<sup>3</sup>

Causal relationship is a medical issue<sup>4</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>5</sup> must be one of reasonable medical certainty<sup>6</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>7</sup>

Medical conclusions based on inaccurate or incomplete histories are of little probative value.<sup>8</sup> Medical conclusions unsupported by rationale are also of little probative value.<sup>9</sup>

The mere fact that a condition manifests itself or worsens during a period of federal employment raises no inference of causal relationship between the two.<sup>10</sup>

### ANALYSIS

On May 12, 2009 at about 9:00 a.m. appellant arrived at the employment office to test three applicants. She brought in a crate of test booklets, answer sheets, all the paperwork and supplies related to recruiting individuals for a job with the employing establishment.<sup>11</sup> Appellant set the crate down on a table and set up for the test, which began at 10:00 a.m. Sometime around 11:20 or 11:30 a.m., while she walked from applicant to applicant, she experienced pain from her back down her right leg and could no longer stand up.

Appellant could not explain why she did not mention the crate when she described what happened on her claim for compensation benefits. There is no reason to doubt that she carried a crate into the venue when she tested applicants. The Board finds that appellant has established

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<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>4</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>7</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>8</sup> *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). *See generally Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

<sup>9</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

<sup>10</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>11</sup> Appellant testified that she might have brought in two crates, but she earlier explained with more certainty that she had brought in one crate along with boxes of forms used by the applicants.

that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged.<sup>12</sup> The question is whether the incident of May 12, 2009 caused or aggravated her diagnosed low back condition.

Dr. Rashti, the attending orthopedic surgeon, concluded that there was a causal relationship. He did not demonstrate an adequate understanding of what happened on May 12, 2009. Dr. Rashti indicated that appellant sustained multiple herniated lumbar discs lifting 30-pound crates. It appears to have been a single crate of uncertain weight containing paperwork and supplies sufficient to test at least three applicants. Appellant did not experience sudden pain while lifting the crate. It was an hour and a half later, while appellant was walking from applicant to applicant during the test that the pain suddenly struck her.

The value of Dr. Rashti's opinion is diminished because he did not accurately address all the relevant facts. He did not explain how lifting a crate around 9:00 a.m. would cause a sudden onset of pain an hour and a half later while appellant was walking from applicant to applicant. Dr. Rashti did not incorporate into his discussion of causal relationship her significant prior medical history of back injury or the fact that prior to May 12, 2009 she was exercising five days a week for three hours. A well-reasoned medical opinion attempting to relate appellant's sudden onset of pain to her employment activities on May 12, 2009 must accurately address those activities and account for her medical and social history. Dr. Rashti did not provide a sound medical explanation for attributing her low back condition to the course of her employment that day. Further, he did not address whether appellant's employment activities that day caused multiple disc herniations or simply aggravated a preexisting condition, either temporarily or permanently. Sound medical rationale is crucial to establishing causal relationship.

Because the medical opinion evidence does not establish the critical element of causal relationship, the Board finds that appellant has not met her burden of proof. The Board will therefore affirm OWCP's June 9, 2010 decision affirming the denial of her claim for compensation benefits.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she injured her low back in the performance of duty on May 12, 2009.

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<sup>12</sup> Appellant testified that she thought she started to feel a little something in her back when she lifted the crate, "but it wasn't nothing much" so she ignored it. The uncertainty and lateness of this detail does not make it credible enough to include as an established fact.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 9, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 9, 2011  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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