

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

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**R.W., Appellant**

**and**

**DEPARTMENT OF THE ARMY, U.S. ARMY  
CORPS OF ENGINEERS, Memphis, TN,  
Employer**

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**Docket No. 10-1320  
Issued: March 7, 2011**

*Appearances:*  
*Appellant, pro se*  
*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 April 12, 2010 appellant filed a timely appeal from a December 15, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act<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 met his burden of proof to establish that he sustained an injury in the performance of duty on June 23, 2009.

**FACTUAL HISTORY**

On July 1, 2009 appellant, then a 49-year-old materials handler, filed a traumatic injury claim (Form CA-1) alleging that on June 23, 2009 he sustained a sharp pain from his low back

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

down to his legs when lifting boxes of copier paper. The employing establishment controverted his claim and indicated on the reverse side of the form that he called in sick the following day and returned to work on June 26, 2009 complaining of back pain.

By letter dated July 7, 2009, the Office informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence needed which was to be submitted within 30 days.

In a July 1, 2009 Form CA-17 with an illegible physician's signature from the Family Physicians Group PC, appellant was diagnosed with low back pain. The physician indicated by check mark that appellant's injury was work related, noting that appellant had an old injury which was exacerbated by his lifting duties. Appellant was advised to return to work part time.

In letters dated July 14, 2009, appellant stated that on June 23, 2009 he was in the warehouse lifting copier paper into a push cart, each box weighing approximately 50 pounds, when he felt pain in his low back. There were no witnesses present and he did not sustain any other injury. At 10:30 a.m., appellant informed Sheila Branch, his supervisor, that he felt pain in his low back from lifting copier paper and was leaving work to seek medical attention. He scheduled an appointment with Dr. Preston Givens, Board-certified in family medicine, on June 24, 2009 and returned to work on June 26, 2009, when he informed Ms. Branch about his work restrictions concerning his back injury.

By letter dated July 17, 2009, Dr. Givens stated that appellant was treated at his office on June 24, 2009, complaining of exacerbation of chronic low back pain. During his June 29, 2009 follow-up treatment, appellant was informed that this was an old workers' compensation claim, which his office did not service. In a July 21, 2009 letter, he stated that he called Dr. Givens several times requesting medical documents but the doctor refused to provide clarification of his reports.

By decision dated August 13, 2009, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that he sustained an injury. It found that the evidence failed to establish the June 23, 2009 incident at the time, place and in the manner alleged and failed to demonstrate that a diagnosed medical condition was connected to the alleged trauma or exposure.

On October 30, 2009 appellant requested reconsideration of the August 13, 2009 Office decision.<sup>2</sup> By letter dated November 13, 2009, he stated that his injury was not pain as the Office had found, but several bulging discs as shown on a magnetic resonance imaging (MRI) scan.

Appellant submitted a September 11, 2009 MRI scan of his lumbar spine without contrast. Dr. Loi Vu, a Board-certified diagnostic radiologist, reported that mild left lateral disc bulging was present at the L1-2 disc and mild broad-based right-sided lateral disc bulging was

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<sup>2</sup> On October 26, 2009 appellant initially requested an appeal to the Board from the Office's August 13, 2009 decision, as well as a request for reconsideration. On November 25, 2009 the Board dismissed his appeal after receiving his request for dismissal on November 13, 2009. Docket No. 10-173 (issued November 25, 2009).

present at the L5-S1 level. He noted that the remainder of the lumbar discs were within normal limits and no fracture or pathologic bony lesion was present.

By decision dated December 15, 2009, the Office denied appellant's request for reconsideration finding that he did not raise substantive legal questions or included new and relevant evidence on whether the employment incident caused a specific injury. It also found that the June 23, 2009 incident occurred at the time, place and in the manner alleged; however, a diagnosed medical condition was not connected to the trauma.

### **LEGAL PRECEDENT**

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a 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 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.

To establish a 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 based on a complete factual and medical background, supporting such a causal relationship.<sup>4</sup> 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of 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>5</sup>

### **ANALYSIS**

The Board notes that in its December 15, 2009 decision the Office performed a merit review of appellant's claim. It accepted that the June 23, 2009 incident occurred at the time, place and in the manner alleged. The Office also addressed causal relationship by reviewing the September 11, 2009 medical report submitted by Dr. Vu and concluding that a medical opinion supporting causal relation was absent. Its decision concluded with a statement that, as appellant

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<sup>3</sup> *J.F.*, 61 ECAB \_\_\_ (Docket No. 09-1061, issued November 17, 2009).

<sup>4</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>5</sup> *James Mack*, 43 ECAB 321 (1991).

neither raised substantive legal questions nor included new and relevant evidence, his request was insufficient to warrant merit review. Since the Office performed a merit review of the evidence submitted, the Board will treat this decision as a merit decision.<sup>6</sup>

The Office accepted that the June 23, 2009 incident occurred as alleged. The issue is whether appellant established that the incident caused a low back injury. The Board finds that he did not submit sufficient medical evidence to support that his diagnosed lumbar condition is causally related to the June 23, 2009 employment incident.<sup>7</sup>

In a July 1, 2009 Form CA-17, appellant's physician indicated by check mark that appellant's low back was work related and noted that he had an old injury which was exacerbated by his lifting duties. The Board finds that the opinion of the physician is not well rationalized. The physician's report lacked a clear explanation on the causal connection of appellant's back condition to his lifting boxes of copier paper on June 23, 2009 and failed to support such explanation with medical evidence. Medical reports not containing adequate rationale on causal relationship are of diminished probative value and are insufficient to meet an employee's burden of proof.<sup>8</sup>

In a July 17, 2009 letter, Dr. Givens stated that appellant was treated at his office on June 24, 2009, complaining of exacerbation of chronic low back pain. He did not provide a firm diagnosis or state that appellant's complaints of low back pain were causally related to the accepted employment incident. Dr. Given's report is insufficient to meet appellant's burden of proof in establishing causal relationship between appellant's back condition and the June 23, 2009 employment incident.

Appellant also submitted a September 11, 2009 MRI scan of his lumbar spine. Dr. Vu diagnosed a mild broad-based left lateral disc bulging at L1-2 and mild broad-based right lateral disc bulging at L5-S1. While he diagnosed appellant's lumbar injury, he did not provide any opinion explaining how appellant's condition was due to the June 23, 2009 employment incident.<sup>9</sup> Moreover, appellant's MRI scan was obtained over four months after the June 23, 2009 employment incident. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>10</sup> Without medical reasoning explaining how appellant's employment factors caused his back injury, Dr. Vu's report is insufficient to meet appellant's burden of proof.<sup>11</sup>

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<sup>6</sup> *Easter I. Shepherd*, 95 ECAB 1386 (1997); *Gilbert C. Dias*, 96 ECAB 2362 (1998).

<sup>7</sup> *See Robert Broome*, 55 ECAB 339 (2004).

<sup>8</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>9</sup> *See Linda L. Mendenhall*, 41 ECAB 532 (1998) (the greater the delay in diagnostic testing the greater the likelihood an event not related to the employment caused the condition).

<sup>10</sup> *C.B.*, 61 ECAB \_\_\_\_ (Docket No. 09-2027, issued May 12, 2010); *S.E.*, 60 ECAB \_\_\_\_ (Docket No. 08-2214, issued May 6, 2009).

<sup>11</sup> *C.B.*, 60 ECAB \_\_\_\_ (Docket No. 08-1583, issued December 9, 2008).

An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.<sup>12</sup> Causal relationships must be established by rationalized medical opinion evidence from a physician. Appellant failed to submit such evidence and the Office properly denied his claim for compensation.

In his October 30, 2009 reconsideration request, appellant stated that his injury consisted of several bulging discs which could be shown on an MRI scan that he submitted. As noted, there was no opinion by Dr. Vu addressing how the MRI scan findings were caused by the incident accepted in this case. The deficiency in the medical evidence is the lack of a physician's opinion addressing how the June 23, 2009 incident caused or contributed to the diagnosed bulging discs. Appellant's statements do not constitute medical evidence which is necessary to establish causal relationship. Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>13</sup> Therefore, appellant's belief that his condition was caused by the June 23, 2009 incident is not determinative.

### **CONCLUSION**

The Board finds that the Office conducted a merit review of the claim and that appellant did not meet his burden of proof to establish that he sustained a traumatic injury on June 23, 2009 as alleged.

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<sup>12</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>13</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 15, 2009 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: March 7, 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