

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

V.R., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
CUSTOMS & BORDER PROTECTION,)
El Paso, TX, Employer)

**Docket No. 12-175
Issued: May 24, 2012**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 7, 2011 appellant filed a timely appeal from a June 20, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on April 27, 2011.

FACTUAL HISTORY

On May 4, 2011 appellant, then a 36-year-old customs and border protection officer, filed a traumatic injury claim alleging that she sustained lower back pain during a vehicle inspection

¹ 5 U.S.C. § 8101 *et seq.*

on April 27, 2011. She stopped work on April 28, 2011 and returned to full-time modified duty on May 4, 2011.

OWCP informed appellant in a May 16, 2011 letter that additional information was needed to establish her claim. It gave her 30 days to submit a medical report from a physician explaining how the reported April 27, 2011 employment incident caused or contributed to a diagnosed condition.

Appellant submitted medical evidence. An April 28, 2011 work release form signed by Dr. Jeremy C. White, a Board-certified emergency physician, placed her on temporary restricted duty for the period May 4 to 12, 2011.

In a May 7, 2011 report, Dr. Mitchell J. Farrell, a Board-certified emergency physician and family practitioner, related that appellant was lifting a tire at work when she experienced acute back pain nine days earlier. On examination, he observed decreased lumbar range of motion and pain radiating to the bilateral lower extremities. Dr. Farrell diagnosed lower back pain.

By decision dated June 20, 2011, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that the accepted April 27, 2011 employment incident was causally related to a lower back condition.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,² including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.³ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁴

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 she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ *R.C.*, 59 ECAB 427 (2008).

⁴ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *T.H.*, 59 ECAB 388 (2008).

evidence is evidence which includes a physician's 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, 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.⁶

ANALYSIS

While the case record supports that appellant lifted a tire during a vehicle inspection on April 27, 2011, the Board finds that she did not establish her traumatic injury claim because the medical evidence did not sufficiently establish that this accepted employment incident caused or contributed to a lower back condition.

Dr. Farrell stated in a May 7, 2011 report that appellant was lifting a tire at work when she experienced acute back pain nine days earlier. Following a physical examination, he diagnosed lower back pain. Dr. Farrell appears to be merely relating appellant's belief that an injury condition resulted from her job duties.⁷ To the extent that this represents his own opinion on causal relationship, he failed to provide medical rationale explaining how lifting a tire on April 27, 2011 pathophysiologically caused or contributed to a lower back condition.⁸ Medical reports consisting solely of conclusory statements without supporting rationale are of diminished probative value.⁹ Likewise, Dr. White's April 28, 2011 work release form is of limited probative value because he did address whether appellant sustained a lower back injury due to her federal employment.¹⁰ In the absence of rationalized medical opinion evidence explaining how performing a vehicle inspection caused a diagnosed low back condition, appellant did not meet her burden of proof.

Appellant contends on appeal that OWCP did not receive all the pertinent evidence. As noted, the employee bears the burden of submitting reliable, probative and substantial evidence. Here, the medical evidence of record did not sufficiently establish appellant's claim. Moreover, appellant failed to provide evidence demonstrating that OWCP disregarded information that was timely submitted. Alternatively, she argues that it did not adequately clarify what was needed from her physician. However, OWCP's decision and this decision of the Board have explained that the medical evidence is insufficient to explain how appellant's work activity on April 27, 2011 caused or aggravated a diagnosed low back condition. Furthermore, appellant may submit new evidence or argument as part of a formal written request for reconsideration to OWCP

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ See *P.K.*, Docket No. 08-2551 (issued June 2, 2009) (an award of compensation may not be based on a claimant's belief of causal relationship).

⁸ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

⁹ *William C. Thomas*, 45 ECAB 591 (1994).

¹⁰ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

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 establish that she sustained a traumatic injury in the performance of duty on April 27, 2011.

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 24, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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