

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

A.S., Appellant	)	
	)	
and	)	<b>Docket No. 15-0614</b>
	)	<b>Issued: June 25, 2015</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
White Plains, NY, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 26, 2015 appellant filed a timely appeal from an August 20, 2014 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.

**ISSUE**

The issue is whether appellant met his burden of proof to establish that he sustained a back condition causally related to the January 25, 2014 employment incident.

**FACTUAL HISTORY**

On January 25, 2014 appellant, then a 59-year-old mail carrier, filed a traumatic injury claim alleging that he slipped on ice and fell in the performance of duty. He stated that on January 25, 2015 at approximately 12:25 p.m., he was walking out the front door when he slipped and fell hard on ice on the sidewalk. Appellant's back hit the ground hard and he heard

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

an audible snapping sound. He partially broke the fall with his left palm and bruised it. Appellant drove himself back to the employing establishment's office and requested to go to the emergency room. He stopped work on January 25, 2014.

Appellant was initially treated in the emergency room by Dr. Jeffrey Mayer, Board-certified in emergency medicine. In a January 25, 2014 report, Dr. Mayer stated that appellant was walking his route as a mailman when he slipped on ice and fell on his lower back. He related that appellant heard a pop/crack sound and experienced pain. Dr. Mayer reviewed appellant's history and noted that he had a history of ankylosing spondylitis. Upon examination of appellant's lumbar spine, he observed tenderness and kyphosis. Dr. Mayer reported full range of motion of the extremities and no tenderness. He reviewed appellant's computerized tomography (CT) scan of the lumbar spine and diagnosed chronic lower back pain.<sup>2</sup> Dr. Mayer concluded that appellant was a 59-year-old male with a history of ankylosing spondylitis who fell at work and now had lower back pain.

On January 30, 2014 Dr. Jason A. Melnick, Board-certified in physical medicine and rehabilitation, related appellant's complaints of low back pain after a fall on Saturday. He noted that appellant was a postal worker who slipped on ice and went to the emergency room. Dr. Melnick noted appellant's history of ankylosing spondylosis and increased thoracic kyphosis. He reviewed appellant's CT scan report which revealed degenerative disc changes and diffuse osteopenia. Upon examination, Dr. Melnick observed tenderness to palpation of the thoracic kyphosis and abnormal range of motion of appellant's lumbar spine. Straight leg raise testing and Patrick's test were both negative. Dr. Melnick referred appellant to physical therapy. In a work status note, he stated that appellant was unable to work until February 21, 2014.

In a letter dated February 20, 2014, OWCP advised appellant that the evidence submitted was insufficient to establish his traumatic injury claim. It requested additional medical evidence to demonstrate that he sustained a diagnosed medical condition as a result of the January 25, 2014 employment incident.

Dr. Melnick reexamined appellant on February 19, 2014 and related that he was doing better since his fall last week, but still complained of nonradicular low back pain. He reviewed the lumbar CT scan report and noted an old compression fracture and ankylosing spondylosis. In a work status note, Dr. Melnick requested that appellant be excused from work until physical therapy was approved.

On March 6, 2014 OWCP advised appellant *via* telephone that additional medical evidence was needed as indicated in the February 20, 2014 development letter. Appellant stated that additional medical evidence was sent. He also explained that he had a preexisting condition that was aggravated by the January 25, 2014 fall.

In a decision dated March 26, 2014, OWCP denied appellant's traumatic injury claim. It accepted that the January 25, 2014 employment incident occurred as alleged, but denied the

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<sup>2</sup> In a January 25, 2014 CT scan examination of appellant's lumbar spine, Dr. Sai C. Park, a Board-certified diagnostic radiologist, observed mild-to-moderate degenerative disc disease at L2-3 and degenerative disc disease at L3-4. He also noted compression deformity of L1 body with no retroversion, which he stated may be chronic in nature.

claim finding insufficient medical evidence to demonstrate that he sustained a diagnosed condition causally related to the incident.

In a May 21, 2014 statement, received by OWCP on May 27, 2014, appellant requested reconsideration. He stated that Dr. Melnick provided medical evidence of a causal relationship between his injury and the January 25, 2014 fall on ice. Appellant also reported that his physicians recommended a thoracic x-ray and physical therapy. He explained that it was a financial burden on himself and his family to pay for all his medical expenses out of pocket and to pay back the initial 45-day waiting period.

In a handwritten April 18, 2014 work status note, Dr. Melnick reported that appellant was unable to work. He reevaluated him on May 6, 2014 and stated that he was undergoing physical therapy three times a week. Dr. Melnick opined that appellant should improve and make a full recovery through physical therapy.

Appellant was also examined by Dr. Andrew M. Peretz, a Board-certified orthopedic surgeon. In an April 24, 2014 report, Dr. Peretz stated that appellant was improving from his fall, but continued to have some right lower lumbar pain. He reported that a CT scan showed that appellant had ankylosing spondylitis. Upon examination, Dr. Peretz observed that appellant walked in a flexed position which was consistent with his ankylosing spondylitis. He diagnosed right lower lumbar pain and opined that it appeared to be related to a fall.

In an April 25, 2014 narrative report, Dr. Melnick related that appellant was examined on January 30, 2014 for low back pain following a slip and fall on ice on Saturday while at work as a postal officer. He noted that appellant went to the emergency room where a CT scan was done that revealed diffuse osteopenia, severe disc degeneration, and bony changes of ankylosing spondylitis. Dr. Melnick reviewed the medical treatment appellant received. He also stated that prior to the January 30, 2014 visit he had seen appellant two and a half years prior, in 2011, when he was treated for nonradicular low back pain and ankylosing spondylitis. Appellant received treatment for his ankylosing spondylitis and had not experienced back pain until his January 2014 slip and fall. Dr. Melnick explained that at the time of his examination appellant suffered from low back pain, ankylosing spondylitis, moderate degenerative disc disease with severe posterior spurring, severe disc narrowing at L4-5, diffuse osteopenia, fusion of disc spaces throughout the lumbar spine, and compression deformity likely chronic in nature. He found that appellant had a "causal relationship of his new-onset acute low back pain to his fall on ice." Dr. Melnick explained that appellant was doing well from his back pain since his treatment and the pain did not slowly return in time, but was explosive in nature after his fall. He noted that at the time of the January 2014 injury appellant had not had any back pain in the three years prior to that fall.

Dr. Melnick reported in a July 3, 2014 work status note that appellant had a procedure for his back and would return to work on July 11, 2014.

By decision dated August 20, 2014, OWCP denied modification of the March 26, 2014 denial decision.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>4</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>5</sup>

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.<sup>6</sup> There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>7</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>8</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition relates to the employment incident.<sup>9</sup>

Under FECA, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for the periods of disability related to the aggravation.<sup>10</sup> Where the medical evidence supports an aggravation or acceleration of an underlying condition precipitated by working conditions or injuries, such disability is compensable.<sup>11</sup> However, the normal progression of untreated disease cannot be stated to constitute aggravation of a condition merely because the performance of normal work duties reveals the underlying condition.<sup>12</sup> For the conditions of employment to bring about an aggravation of preexisting disease, the employment must cause acceleration of the disease or precipitate disability. When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.<sup>13</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>7</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>8</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>10</sup> *Raymond W. Behrens*, 50 ECAB 221 (1999); *James L. Hearn*, 29 ECAB 278 (1978).

<sup>11</sup> *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

<sup>12</sup> *Glenn C. Chasteen*, 42 ECAB 493 (1991).

<sup>13</sup> *Raymond W. Behrens*, *supra* note 10.

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>14</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>15</sup> The weight of the 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>16</sup>

### ANALYSIS

Appellant alleged that on January 25, 2014 he injured his lower back and left palm when he slipped on ice and fell down in the performance of duty. OWCP accepted that the incident occurred as alleged, but denied his traumatic injury claim finding insufficient medical evidence to establish that he sustained a diagnosed medical condition as a result of the employment incident. The Board finds that appellant did not meet his burden of proof to demonstrate that he sustained a diagnosed back condition causally related to the January 25, 2014 employment incident.

The record reveals that in 2011 appellant was treated for low back pain that resulted from ankylosing spondylitis. Appellant received medical treatment and reported that he did not experience any more back pain until the January 25, 2014 slip and fall at work. On March 6, 2014 he informed OWCP *via* telephone that his preexisting condition was aggravated by the January 25, 2014 fall.

In support of his claim, appellant submitted various reports by Dr. Melnick dated January 25 to April 25, 2014. Dr. Melnick provided an accurate history of the January 2014 slip and fall at work and of appellant's history of ankylosing spondylosis and increased thoracic kyphosis. Upon examination, he observed tenderness to palpation of appellant's thoracic kyphosis and abnormal range of motion of appellant's lumbar spine. Straight leg raise and Patrick's test were both negative. Dr. Melnick diagnosed low back pain, ankylosing spondylitis, moderate degenerative disc disease with severe posterior spurring, severe disc narrowing at L4-5, diffuse osteopenia, fusion of disc spaces throughout the lumbar spine, and compression deformity likely chronic in nature. In an April 25, 2014 narrative report, he opined that appellant had a "causal relationship of his new-onset acute low back pain to his fall on ice." Dr. Melnick noted that at the time of the January 2014 injury appellant had not had any back pain in the three years prior to that fall. He further explained that appellant was doing well from his back pain since his treatment and the pain did not slowly return in time, but was explosive in nature after his fall.

The Board notes that Dr. Melnick provided an accurate history, findings on examination, and a diagnosis of a back condition. Dr. Melnick opined that there was a causal relationship

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<sup>14</sup> See *J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>15</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>16</sup> *James Mack*, 43 ECAB 321 (1991).

between appellant's low back symptoms and the January 2014 slip and fall on ice. The Board finds, however, that he did not provide sufficient medical rationale explaining how appellant's slip and fall at work aggravated his previous back condition or caused a new condition.<sup>17</sup> The only explanation that Dr. Melnick provided was that appellant was doing well before the fall and had not experienced back pain until the January 2014 injury. He did not explain how the slip and fall incident would have aggravated the preexisting back condition or caused any newly diagnosed medical condition. The Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without sufficient rationale, to establish causal relationship.<sup>18</sup>

Appellant also received treatment in the emergency room by Dr. Mayer who related that appellant had a history of ankylosing spondylitis and recently slipped on ice and fell on his lower back. He conducted an examination and diagnosed chronic lower back pain. Dr. Mayer reported that appellant was a 59-year-old male with a history of ankylosing spondylitis who fell at work and now had lower back pain. Although he accurately described the January 25, 2014 slip and fall at work and provided physical examination findings, he did not provide any diagnosis of a back condition other than back pain.<sup>19</sup> Furthermore, Dr. Mayer does not provide any opinion on the cause of appellant's back symptoms. 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>20</sup> Likewise, Dr. Park's January 25, 2014 CT scan diagnostic report is also insufficient to establish causal relationship as he does not provide any opinion on the cause of appellant's back conditions.

In an April 24, 2014 report, Dr. Peretz noted that appellant was improving from his injury, but continued to complain of right lower lumbar pain. He related that a CT scan showed that appellant had ankylosing spondylitis. Dr. Peretz diagnosed right lower lumbar pain and opined that it appeared to be related to a fall. The Board notes that he also failed to provide a diagnosed condition, other than back pain. Furthermore, Dr. Peretz's opinion that appellant's back symptoms "appeared to be" related to the January 25, 2014 incident is speculative in nature. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.<sup>21</sup>

On appeal appellant alleges that the evidence is sufficient to accept his claim. He specifically quoted several paragraphs of Dr. Melnick's narrative report as evidence of a causal relationship. As stated above, however, Dr. Melnick's reports lack the level of probative value necessary and are thus insufficient to establish that the January 25, 2014 employment incident caused his current back symptoms or aggravated his preexisting condition. An employee's belief

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<sup>17</sup> Medical evidence that states a conclusion but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *See J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

<sup>18</sup> *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>19</sup> The Board has held that pain is a description of a symptom, and not considered compensable medical diagnosis. *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

<sup>20</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, *supra* note 17; *A.D.*, *supra* note 17.

<sup>21</sup> *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>22</sup> Causal relationship is a medical question that must be established by probative medical opinion from a physician.<sup>23</sup> As appellant failed to provide such probative medical opinion in this case, the Board finds that he did not meet his burden of proof to establish his 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 did not meet his burden of proof to establish a back condition as a result of the January 25, 2014 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 20, 2014 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 25, 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>22</sup> *Jennifer Atkerson*, 55 ECAB 317 (2004).

<sup>23</sup> *W.W.*, Docket No. 09-1619 (June 2, 2010); *David Apgar*, *supra* note 8.